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**MOZAMBIQUE**

# AgCLIR MOZAMBIQUE

COMMERCIAL, LEGAL, AND INSTITUTIONAL REFORM  
IN MOZAMBIQUE'S AGRICULTURE SECTOR

AGENDA FOR ACTION

AUGUST 2011



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Abt Associates Inc. | 4550 Montgomery Avenue | Suite 800 North |  
Bethesda, Maryland 20814 | T. 301.347.5000 | F. 301.913.9061 |  
[www.abtassociates.com](http://www.abtassociates.com)

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# I. INTRODUCTION

With a view toward identifying opportunities for inclusive economic development and strengthened food security, this report addresses the legal and institutional environment for doing business in Mozambique's agriculture sector. Through close examination of agriculture-related policies, laws, institutions, and social dynamics, it aims to inform assistance decisions by the U.S. Agency for International Development (USAID), as well as by other agencies and donors, in the areas of agricultural growth and food security. It also directs its insights and recommendations toward the country's government officials, private sector representatives, and others. The use of this document is intended to be multifaceted: it can be accessed as a foundation for agriculture policy development, a framework for donor intervention, a substantive resource for future projects, a benchmark for assessing change, a tool for academic instruction, and, most immediately, a "jumping off point" for stakeholder discussion and consensus-building.

## I.1 AGRICULTURE IN MOZAMBIQUE: ESCAPING LEGACY THROUGH OPPORTUNITY

Mozambique's persistent economic poverty, including the conditions rendering its agricultural productivity among the lowest in the world, has been well documented and amply discussed.<sup>1</sup> In short, at least 55% of the country's 23 million people lives below the government-designated poverty line – which is measured in quite sparing of terms<sup>2</sup> – with approximately 80% of Mozambicans deriving their livelihoods from agriculture, predominately at the subsistence level.<sup>3</sup> At least 90% of farmers work small plots and grow food for domestic consumption, chiefly maize, rice, cassava, and various fruits and vegetables. Low productivity on these farms is endemic because, among other reasons, high-yielding, government-certified seed is rarely used; purchase and application of fertilizer is beyond the means of most farmers; the use of energy is unusually inefficient; and rainfall is unpredictable and irrigation underused.<sup>4</sup> Once

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1. See, inter alia, accompanying materials from the World Bank Seminar on Growth, "Transformation, and Job Creation: Part I: Boosting Agricultural Production to Reduce Rural Poverty" (February 9-11, 2011; Maputo, Mozambique), available at <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/MOZAMBIQUEEXTN/0,,contentMDK:22521958~pagePK:141137~piPK:141127~theSitePK:382131,00.html>.

2. See Frank Volmer, *Measuring Poverty in Mozambique: A Critique* 21 GlobalAffairs.es (July-September 2010) (asserting that Mozambique's measurement of poverty does not conform with international best practice and further arguing that the country should replace its "current unidimensional poverty measure with a multidimensional measurement application, one that shall allow the better crafting of policy responses to fight poverty").

3. Unless identified otherwise, statistics cited in this report are drawn from a number of sources, including various United Nations and World Bank publications, the CIA's online World Factbook (2011), and the Economist's Pocket World in Figures (2010). Most of these statistics are themselves derived from Mozambique's National Statistics Institute (INE). Given limitations in domestic information-gathering in most developing environments, most figures cannot be said to be exact, but they do represent best estimates as accepted by the international community.

4. Douglas Gollin, "Removing Technology Constraints for Agricultural Development in Mozambique" (presentation at World Bank Seminar on Growth, supra note 1, at Section 1) (February 9-11, 2011).



products have left the farm, inadequate storage facilities and problematic rural transport options contribute to pernicious rates of post-harvest loss. Compounding these issues is the country's inflation rate, estimated at 13.5% in 2010, which ranks among the worst in the world.

According to the World Food Program, more than 44% of Mozambique's population suffers from chronic malnutrition and 34% are "food insecure and face perpetual hunger."<sup>5</sup> These conditions are compounded by the extreme prevalence of HIV/AIDs, which infects 11.5 % of the country's adult population. Adult literacy is improving, but still vastly below world averages, with around 60% of men and 45% of women assessed in recent years as functionally literate (with far lower rates of literacy identified in rural areas).

These dismal headlines derive significantly from the legacy of a colonial system that formally deprived Mozambique's native communities from equal access to education and economic opportunity until the mid-1970s, followed by nearly a generation of civil war that ended in 1992. But they also belie certain obvious and virtually immediate opportunities for Mozambique to transform its agriculture sector into one that rises to its many natural advantages. Unlike several of its neighbors, the country is neither landlocked nor lacking in diverse and abundant resources. Nor is it currently war-torn or politically isolated. Among other opportunities, its 2500 km of coastline; four ports on the Indian Ocean that extend into regional corridors of commercialization; and natural trade synergies with both its economically powerful neighbor, South Africa, as well as other neighbors that require access to ports, render Mozambique a well of potential. Other immediate prospects stem from Mozambique's shared history and connections with other lusophone countries, its extensive reserves of arable, non-protected land, and an environment for credit and investment that is increasingly positioned to support the agriculture sector.

Indeed, evidence of next-generation promise is found in far better-than-average economic growth rates, including around 7% growth in agriculture between 2003 and 2009,<sup>6</sup> a rate that is 9th<sup>th</sup> in the world. In addition, the country has witnessed recent significant improvements in certain value chains, including cashews, bananas, and poultry. Even against a current backdrop of low-productivity farms and labor-intensive production, Mozambique is poised to become increasingly competitive in its own domestic food markets, to strengthen its place in regional markets, and to not only become food-secure, but also help strengthen food security in the region. Mozambique has genuine potential to intensify productivity, grow an internal network of agricultural service-providers (such as private machinery and lab services), exploit opportunities in biofuel production (including through use of agricultural waste), and otherwise engage smallholder-led commercialization that can support a more food-secure, prosperous country.

Drawn from a diagnostic process explained later in this introduction, this report examines the relationship between Mozambique's enormous economic promise in its agriculture sector and the environment for doing business that will allow (or prevent) realization of that promise. This report specifically assesses the fundamental question of whether people with good ideas in Mozambique's agriculture sector are in a position to launch and maintain enterprises with reasonable prospects for success. Indeed, given the sector's inherent challenges of weather, water, soil, energy, and other related conditions, the political, legal, institutional and social dynamics for supporting such activity become all the more critical. On these dynamics, as asserted during this diagnostic by one long-term foreign resident of Mozambique, donors and reform advocates "could be more courageous." That is, realizing Mozambique's vast potential

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5. World Food Program, Mozambique country overview, available at <http://www.wfp.org/countries/mozambique>.

6. Rafael Uaiene, "The State of Agriculture and Challenges in Mozambique" (presentation at World Bank Seminar on Growth, *supra* note 1, at Slide 3) (February 9-11, 2011) (citing INE).

requires not only a series of bureaucratic fixes – many of which are recommended in this report – but also a high-level commitment to greater accountability, stronger leadership, and higher expectations of performance at all levels of government and stewardship of the country.

## 1.2 AGCLIR: A TOOL FOR UNDERSTANDING OBSTACLES TO START UP AND GROWTH OF AGRIBUSINESS

Generally tracking seven of the areas covered by the World Bank's annual *Doing Business* initiative,<sup>8</sup> along with additional inquiry into domestic infrastructure for marketing agricultural products, this USAID-sponsored Agribusiness Commercial Legal and Institutional Reform (AgCLIR) diagnostic reviews the legal frameworks, numerous public and private institutions, and social dynamics underlying conditions for reform in the agriculture sector. Based on its findings, a variety of recommendations are made. The underlying diagnostic exercise endeavors to take key themes found in the World Bank's *Doing Business* initiative, which since 2002 has assisted countries in targeting where their regulatory environments may favor or interfere with economic growth, and investigates how these same issues affect the agriculture sector in a given country.

For each of the 10 topics the *Doing Business* reports cover,<sup>9</sup> the World Bank considers key indicia of how the regulatory environment is “working,” measured by such means as the number of procedures involved in achieving a goal (i.e., getting credit, enforcing a contract); the number of days it takes; and the costs of the procedures in relation to per-capita income. The World Bank gathers data from 183 countries and ranks each, thereby demonstrating how, to this limited degree, their respective environments compare to others throughout the world. AgCLIR supplements *Doing Business* by examining key components of the regulatory environment for agricultural enterprise in those developing countries, including Mozambique, whose economies and workers are significantly based in agriculture.

World Bank <i>Doing Business</i> Categories – Mozambique	2011	2010	Change in rank
<b>Doing Business Overall (183 countries surveyed)</b>	126	130	+4
Starting a Business	65	96	+31
Dealing with Construction Permits <sup>7</sup>	155	159	+4
Employing Workers	NA	156	NA
Registering Property	144	153	+9
Getting Credit	128	125	-3
Protecting Investors	44	41	-3
Paying Taxes	101	98	-3
Trading Across Borders	133	136	+3
Enforcing Contracts	132	129	-3
Closing a Business	129	135	+6

7. In its 2008 survey, the World Bank changed the designation of the category “Dealing with Licenses” to “Dealing with Construction Permits,” a title that more accurately reflects the scope of its survey. AgCLIR’s focus remains on Dealing Licenses, many of which are required to do business in the agricultural sector.

8. See World Bank, *Doing Business 2011* (2010), and accompanying literature at [www.DoingBusiness.org](http://www.DoingBusiness.org).

9. Starting a Business, Dealing with Construction Permits, Employing Workers, Registering Property, Getting Credit, Protecting Investors, Paying Taxes, Trading Across Borders, Enforcing Contracts, and Closing a Business. In its most recent report, the World Bank has removed Employing Workers from its scored areas of inquiry, due to ongoing controversies over the issues it evaluates. In addition, in 2008, the World Bank changed the designation of the category “Dealing with Licenses” to “Dealing with Construction Permits,” a title that more accurately reflects the scope of its survey.

In the most recent *Doing Business* report, issued in September 2010, Mozambique ranked 126 out of 183 countries – and a relatively respectable 13<sup>th</sup> out of 46 Sub-Saharan African countries surveyed. In this latest review, Mozambique exhibited dramatic improvement in the area of Starting a Business and further registered a strong showing in Protecting Investors (two topics that are not, accordingly, reviewed in this diagnostic). Improving future rankings – and, indeed, strengthening the country's business environment generally – is a priority of Mozambique's government.

#### **FEED THE FUTURE: KEY OBJECTIVES**

- Accelerate inclusive agriculture sector growth through improved agricultural productivity, expanded markets and trade and increased economic resilience in vulnerable rural communities.
- Improve nutritional status by increasing access to diverse and quality foods and by strengthening the prevention, identification and treatment of under-nutrition.

USAID's Feed the Future initiative, which prioritizes increased investment in agriculture and rural development as a lever for combating food insecurity and an engine for broader economic growth, prosperity, and stability, reinforces USAID's focus on agriculture and food security.<sup>10</sup> Feed the Future investments will help create and refine enabling policy environments and physical infrastructure that facilitate private sector investment by individual agricultural producers, small and medium enterprises (SMEs), and larger businesses. It is within this context, as well as within Mozambique's ongoing process of devising a compact and investment plan with the Comprehensive Africa Agricultural Development Program (CAADP),<sup>11</sup>

that USAID commissioned this AgCLIR diagnostic. The goal of this report is to improve understanding of why key aspects of Mozambique's environment for agribusiness function as they do; what policy changes could lead the sector to greater productivity, security, and growth; and who among Mozambique's economic actors must lead or implement change.

Targeted to address key issues in Mozambique's agricultural economy, this diagnostic analyzes seven of the 10 areas of Doing Business – Dealing with Licenses, Employing Workers, Getting Credit, Paying Taxes, Trading across Borders, Enforcing Contracts, and Closing a Business – and also examines the closely related issue of Accessing Infrastructure for Markets. The in-country portion of the diagnostic took place February 21-March 8, 2011. A seven-member team of consultants – four from Mozambique and three from the United States – convened to conduct interviews across the agriculture sector. (Although AgCLIR diagnostics have been completed in eight other countries since 2008,<sup>12</sup> this AgCLIR was unique in that it was, for the first time, managed by a USAID-funded, in-country project – the Mozambique Competitiveness and Agribusiness program (AgriFUTURO)<sup>13</sup> – and executed by a majority-local team.) Individually and in groups, the team met with national and local officials, farmers and their associations, owners of agriculture enterprises, business associations, non-government organizations (NGOs), the banking and lending community, and many others. Interviews and observations took place in and near Maputo City and Gaza, Manica, Sofala and Nampula. More than 150

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10. For a full summary of the U.S. government's Feed the Future initiative, see Feed the Future Guide: A Summary, available at [http://www.feedthefuture.gov/FTF\\_Guide\\_summary.pdf](http://www.feedthefuture.gov/FTF_Guide_summary.pdf).

11. Extensive details about CAADP are available at its website, <http://www.nepad-caadp.net>.

12. Prior AgCLIR diagnostics have taken place in Ghana, Nigeria, Senegal, Kosovo, Tanzania, Uganda, Zambia, and the Democratic Republic of Congo. Copies of diagnostic reports are available at the website of USAID's Enabling Agricultural Trade (EAT) project, [www.eatproject.org](http://www.eatproject.org).

13. Extensive details about AgriFUTURO are available at its website, <http://www.agrifuturoproject.com>.

stakeholders in all were consulted. The AgCLIR diagnostic culminated in a roundtable presentation and discussion on March 8, 2011, attended by more than 75 stakeholders, including several donors. At the roundtable, team members introduced their preliminary observations, which were then subjected to feedback and elaboration from the participants. This input helped shape the final conclusions of the team, which are found in this report.

#### THE AgCLIR TEAM

- **Carlos Moamba**, Chief of AgCLIR/Mozambique
- **Louise Williams**, Team Leader (Employing Workers, Getting Credit)
- **Patricia Costa**, Deputy Team Leader
- **Paulo Cuinica**, Independent Consultant (Enforcing Contracts)
- **M. Elizabeth Diebold**, USAID/Washington (Food security advisor, Getting Credit)
- **Tom Easterling**, Independent Consultant (Trading across Borders)
- **Tatiana Mata**, Independent Consultant (Accessing Marketing Infrastructure)
- **A. Carvalho Neves**, Independent Consultant (Dealing with Licenses; Closing a Business; Getting Credit)
- **Hermes Sueia**, Independent Consultant (Paying Taxes)
- **Dercio Matale**, AgCLIR communications and support
- **Celma Noormahomed**, Administrative support
- **Miranda Meleki**, Administrative support

### I.3 SUMMARY OF FINDINGS

Summaries of subject-matter areas examined in this diagnostic are set forth below.

**Dealing with Licenses.** A broad range of licensing and permitting authority sets the stage for business activity in Mozambique, including in the agriculture sector. The prevailing ideology underlying this authority has transformed dramatically in recent years – from a socialist and centrally oriented economy, which significantly restricted options available to entrepreneurs, to far greater orientation toward free market principles and local control. Within today's legal framework, there remains some duplication, overlap, and internal inconsistency that warrant scrutiny and reform. Nonetheless, the formal licensing regime constrains the ability for

enterprises to flourish far less than the capacity and attitudes of public servants who are charged with implementing licenses and otherwise facilitating business-oriented services. Namely, regulatory authorities are not held especially accountable for their work. There is a widely prevalent instinct to seek out donor resources rather than to internally drive low-cost reforms. For example, most regulatory authorities do not adequately inform the public about the formally established costs and required timeframes for service delivery. At a minimum, posted fees and procedures in all public offices, particularly in the rural areas, could help private-sector actors better understand – and demand – their rights.

In addition, given high levels of illiteracy, poor infrastructure, and unqualified workers in Mozambique, it is difficult for the private sector, particularly smaller enterprises, to fully abide by all licensing requirements. Accordingly, the public sector's efforts should center on achieving the underlying purpose of licensing rules – generally, the protection of public health and safety – as opposed to inappropriate revenue-raising for government or simply penalizing enterprises that do not yet understand the rules.

For several years, government in Mozambique trended toward becoming increasingly decentralized, and authority for decision-making and management of funds derived from licensing became increasingly vested at the provincial and district levels. However, the decentralization process has not rolled out at the same speed throughout the country, and

current commitment to decentralization appears to be wavering. As a practical matter, licensing practices in certain provinces or districts often do not yet reflect existing changes in legislation.

**Employing Workers.** Mozambique's agricultural workers, most of whom work informally on small family farms, are overwhelming unprepared to meet the demands of a modern, productive agriculture sector. Even by regional standards, their productivity on the farm is low and there is a sense across agricultural subsectors – from staple crops production, to light industry, to exports – that “we cannot compete” with neighboring countries, including South Africa and Malawi. Agricultural workers have not come close to realizing the opportunities presented through such approaches to efficiency as farmer associations and formal cooperatives. Moreover, they feel barely served by agricultural extension services, which are supposed to help bring updated knowledge and awareness of production opportunities to their constituents. In addition, employers attribute poor work habits in low-skill, wage-earning jobs to the scarcity of such jobs, meaning that most laborers have not worked under formal conditions before. In the critical area of knowledge-based services, the quality of specialized education in Mozambique is insufficient: vocational schools and university faculties lack the laboratories and equipment they need to properly train agricultural managers and professionals, and they have not yet exploited vast opportunities to integrate the private sector into the training regime. The increasing demand for higher education has resulted in a growth of private institutions – these vary in quality, but have the potential to help meet the country's need for training and education that meets and expands available opportunities in the workforce.

In addition to critical skill shortages, employers complain about the labor and employment law under which they do business. Efforts were made during the revision of the country's Labor Law in 2007 to allow greater flexibility in the conditions of work – including procedures for hiring and firing employees – thus encouraging employers to take on more formal workers. However, most employers continue to believe that the law's “crippling redundancy requirements” and other constraints discourage them from employing more workers. The law makes employment of skilled foreign labor especially cumbersome and expensive and enables government bureaucrats to substitute their judgment of who a company should hire for the company's own views. As a result, companies must significantly restrict the extent to which they benefit from the contributions of foreign workers, ultimately missing opportunities to build local skills and explore new opportunities in agriculture production. This fact contrasts with recent best practices in similar low-skill environments, such as Rwanda, where foreign workers are not regarded as competition to be avoided, but rather as critical resources for knowledge, skills, and development, to be embraced.

**Getting Credit.** In Mozambique, less than 6% of total lending in 2010 was dedicated to agriculture, down from around 10.5% in 2004. A limited group of so-called traditional products (tea, sugar, cashew, sisal, coconut and cotton) are the main recipients of agriculture credit (67.7%). Since 2004, only sugar and cashew show consistent growth in financing. In contrast, tea, coconut, sisal, and, most recently, cotton have decreased. Recent years reveal a shift in agricultural credit allocation: in 2004, the traditional products received 78.8% of total credit to agriculture, a figure that diminished to 52.5% in 2010. Nontraditional products receive a growing percentage of agriculture credit, specifically from 21.1% in 2004 to 47.4% in 2010. Formal data is not available to specify precisely what other agriculture products are being financed, but bananas, mangoes, citrus, macadamia nuts, jatropha, and cereals reportedly are among them.

Thus, the primary recipients of agricultural finance in Mozambique are crops oriented for export, with the good news in that regard being that the list of export crops is expanding. In real terms, however, lending to all agriculture is scant and difficult to access. Especially underserved are

products that, with strengthened access to finance, could far more effectively respond to robust domestic demand: these include eggs, chicken, meat, milk, and even fruit and vegetables that are currently imported but, produced more efficiently, could serve Mozambique's own markets and even be primed for export. Access to finance for products serving domestic and export markets alike, however, remains extraordinarily weak. Banks and other lending institutions continue to regard the risks of lending to agriculture as too high: reasons for this include the inability to use land (or land use rights) as collateral; the poorly protected legal rights in secured lending, as evidenced by the lack of a single collateral registry; the virtual absence of crop insurance; cumbersome and inefficient procedures for investigating credit histories; poor societal attitudes toward lending, including bad habits reinforced by government lending schemes; and others.

This report recommends a variety of reforms in the area of getting credit. Among them, it suggests revisiting USAID's 2007 report on financial services and identifying where recommended reforms have (or have not) been undertaken, and why; supporting the enactment of a modern secured transactions law to provide quick, inexpensive, and simple creation of a proprietary security right; establishment and building of the capacity of private credit bureaus; tackling Mozambique's interest-rate problem through concentrated efforts at risk reduction, increased insurance opportunities, and changes in lender incentives; promoting mobile finance interoperability; improving the enforcement of agricultural contracts; and enacting a new bankruptcy law and taking steps toward its effective implementation. Moreover, unequivocally, Mozambique should reinforce its commitment to property reform, as detailed in the Cross Cutting Themes section of this Introduction.

**Paying Taxes.** Since 1998, all of Mozambique's primary tax instruments have been substantially transformed. As a result, tax revenues increased from 14% of GDP in 2005 to 16.6% by 2010. Other achievements include the enactment of a new General Tax Law clarifying rules for tax collection and taxpayer rights; rationalization of fiscal benefits, in particular ending the special regime for large projects; a new Municipal Finance Act; reduction of the burden on small business by increasing tax thresholds and enacting a Simplified Tax for Small Contributors (ISPC); and a strengthened tax regime for the mining and petroleum sectors.

Several additional reforms are still underway. These include integrating tax and customs information systems; tax collection via banks; improving audit revenues relative to total revenue; modernizing tax administration; and implementing tax courts. Moreover, Mozambique's national Strategy for the Improvement of the Business Environment recognizes that the fiscal burden in the country is still too high compared with other countries in the region. It also notes the perception that fiscal legislation is not designed with SMEs in mind and that further work is necessary to accelerate the reimbursement of VAT to businesses.

The key challenges in the area of Paying Taxes include the following: (1) the lack of public information and taxpayer services; that is, the code of fiscal benefits approved under "Green Revolution" is still poorly disseminated; (2) excessive complexity of the tax system, especially considering that many farmers are illiterate and lack basic legal documents (interviewees were especially critical of the complexity of the income tax and the VAT); and (3) the fact that agricultural inputs, such as seeds and agro-chemicals and manual implements, are not classified under the retail commerce classes, which would diminish their tax implications.

**Accessing Marketing Infrastructure.** With respect to the critical aspects of infrastructure for marketing agricultural products – including storage facilities, roads, ports, and information technology – Mozambique is a country rich in legislation. The quality and number of its laws and regulations is perceived as generally sufficient; however, the country's capacity to implement them remains insufficient. The public sector lacks financial, human, material and technological

capacity to address the increasing needs of farmers and producers and to otherwise respond to the demands of the private sector. The highly visible impact of this poor implementation is that Mozambique imports many of the products it could grow and market itself.

Once agricultural products leave the farm-gate, a variety of constraints unduly interfere with their ability to reach markets that will afford them fair prices from a variety of buyers. First, the deficient state of classified and unclassified roads cripples interprovincial, rural-urban and regional trade. Second, Mozambique's ports need to be more efficient and effective, such as providing cold storage and moving goods through faster, to attract more business and become more competitive. Third, implementing institutions, including the Ministry of Agriculture, the Ministry of Industry and Commerce, the Mozambique Cereals Institute, and others, lack necessary stewardship and influence to meet their mandates. Fourth, private-sector business organizations do not yet effectively lobby before government. They need a stronger voice to negotiate pro-market development policies. Finally, Mozambique needs to more effectively leverage its resources in agriculture technology and inputs for the purpose of strengthening its farm productivity and product quality, so that the country's goods will be more attractive in the domestic, regional, and international markets.

**Trading across Borders.** Mozambique has worked to institute a program of trade reforms since the early 1990s. As a result, it has one of the most open trade regimes in Africa. The country has five tariff bands (0, 2.5, 5, 7.5, and 20%) with the highest rate applied to basic food products such as meat, fish, fruits, vegetables, beverages, and clothing. In addition, goods and services may be subject to: (1) a value added tax (VAT) at 17% of Cost, Insurance, and Freight (CIF) value; (2) an excise tax (specific consumption tax), levied on tobacco products, alcoholic beverages, and luxury products; and (3) a surtax, levied on "sensitive" products, including sugar, cement, and certain steel products. In direct support of its emerging cashew processing industry, Mozambique applies an export tax of 18% on raw cashews, and, in 2010, Mozambique levied a 20% tax on the export of logs or stakes, with slightly lower rates levied on processed wood. In general, the agricultural sector remains more protected than the non-agricultural sector.

Despite the recent improvements of many laws, institutions, personnel, and infrastructure resources in Mozambique, traders of agricultural products continue to experience delays, administrative burdens, and corruption, thus elevating the transactions costs of regional and international trade. The greatest constraints to Mozambique's exports to regional markets, in particular to South Africa, concern the lack of trade integration – that is, the continued assessment of duties on sensitive food products, the lack of harmonization of transport regulations, non-tariff barriers (including differences over certificates of origin), and sanitary and phytosanitary (SPS) issues. More can and should be done to increase the effectiveness of trade institutions, integrate border-crossing procedures, improve risk management, streamline customs clearance processes, improve technology utilization, curb corruption, and address the infrastructure needs for agricultural products moving through Mozambique's ports, airports, and trade corridors.

**Enforcing Contracts.** Although Mozambique has relatively sound legislation for the enforcement of contracts, various economic and socio-cultural issues sharply limit the use of formal, written contracts in the agriculture sector. Typically, only large companies and banks fully integrate formal contracts into their business relationships. In contrast, most Mozambicans involved in agribusiness rely on informal, verbal contracts. Within "contract farming" relationships, some large companies supply small producers with inputs, in exchange for the promise to sell their produce – mostly for export – to the company. Even in these relationships, however, smallholders tend to regard such arrangements as merely guidelines for business relationships, rather than strict commitments on which enterprises can make plans for the



future. A lack of flexibility in such contracting arrangements may aggravate the problem of “side-selling” – that is, contracts that are viewed as exploitative are less likely to sustain full faith and compliance.

In recent years, Mozambique has created commercial sections in courts for the purpose of streamlining cases involving the flow of commerce. Currently, the functioning sections are in the Maputo City Judiciary Court (two sections) and the Sofala Provincial Judiciary Court (one section). These resources for resolving commercial disputes supplement services are provided by the Center for Arbitrage, Conciliation and Mediation (CACM), as well as the Commission for Labor Mediation and Arbitrage, two services that appear to reinforce general compliance with commercial contracts. In the meantime, primary-level courts lack sufficient resources, streamlined practices, and public confidence. Informal negotiation between the concerned parties is the most common and preferred means of dispute resolution.

There is a scarcity of legal services oriented toward agriculture in Mozambique’s rural communities, including a shortage of lawyers and an absence of practical guidance on the formation and enforcement of agricultural contracts. In addition, there is little academic coordination between agriculture and the law, despite the substantial role that agriculture plays in Mozambique’s economy. Opportunities abound for increased coordination, through strengthened training of lawyers in agricultural topics; increased academic discourse on the nexus between agriculture and the law; and public outreach to farmers and their associations about the importance of building a culture of contracts.

**Closing a Business.** Despite the need for a clear legal framework governing the winding up or reorganization of insolvent companies, Mozambique does not have a specific law for bankruptcy at this time. The legal and regulatory framework on bankruptcy improved in 2005 with the revision and adoption of two main legal instruments, Law No. 1/2005, December 27th and Law No. 9/2005, December 23rd, which introduced amendments to the Code of Civil Procedure. In addition, Law No. 2/2005, December 27th and Law No. 10/2005, December 23rd adopted the Commercial Code and introduced additional changes to the regulatory framework around bankruptcies.

#### USE THIS REPORT!

Although developed by USAID, this AgCLIR report has many uses within Mozambique’s large community of stakeholders in the agriculture sector. These include uses as:

- A foundation for agriculture policy development
- A framework for donor intervention and coordination
- A substantive resource for future agriculture development/reform projects
- A benchmark for assessing change
- A reference for potential investors
- A teaching tool for professional trainings and academic courses
- A basis for writing articles and otherwise encouraging dialogue (whether agreeing or disagreeing with AgCLIR findings) in a newspaper, journal, or other forum
- A “jumping off point” for stakeholder discussion and consensus-building.

In recent years, the growth of Mozambique’s private sector, coupled with increased socio-economic dynamism, reinforced the need for an independent bankruptcy law to respond to the needs dictated by integration into regional markets. Significantly modeled on Brazil’s 2005 insolvency law, a draft law was created in 2007, with contributions enlisted from the local private sector. A June 2011 paper by the USAID/SPEED project, “Review of 2009 Draft Law on Business Insolvency (Mozambique)”, details the key contents of the law and expectations for its enactment; according to the paper, the draft law will likely be submitted to Parliament in Fall 2011. “While the choice of Brazilian law as a model is appropriate,” the paper contends, “the draft may need further revisions to



address the Mozambican context, so more research and stakeholder impact is needed.” Moreover, if and when the new law is enacted, there will be considerable need for outreach to the private sector, the financial sector, and the public at large, as well as considerable capacity-building among Mozambican judges, insolvency administrators, and supporting professionals such as lawyers, accountants, and business managers.

## I.4 CROSSCUTTING THEMES

This diagnostic is organized so that various components of a healthy and prosperous environment for agricultural enterprise are considered discretely and, where appropriate, in relation to each other. Certain issues and dynamics are prevalent across this analytical framework, and are worth considering independently. Two cross-cutting themes emerged as particularly strong in this diagnostic: (1) access to and management of land; and (2) the gap between the legal framework – which, though far from perfect, is considered generally accessible and clear – and implementation of this legal framework in the agriculture sector in a way that truly supports the development of private enterprise. These themes are discussed below.

**Access to land.** First, undeniably, the “land issue” is at the heart of Mozambique’s deeply constrained ability to rise to the potential of its agriculture sector. Although the purest of the free-market advocates have long criticized the constitutionally mandated state-ownership of all land, the philosophical underpinnings of land conditions in Mozambique, as applied by the country’s legal framework,<sup>14</sup> do not in themselves hold back efficient use of the country’s natural resources. Indeed, one of the world’s most successful developing economies, Vietnam, manages a similar system of state-owned land through a vibrant market in Land Use Rights. Mozambique has the potential to develop an equally dynamic system, while also doing a far better job than Vietnam at protecting natural resources and avoiding corrupt practices.<sup>15</sup> To do so, however, requires increased political resolve and greater accountability on the part of the country’s national, regional, and local leadership than has been exhibited to date.

Specifically, Mozambique’s system of managing land usage rights (DUATs), established through its Land Law of 1997, is a clear example of a law that could be workable in principle but is undermined in practice by a lack of order, transparency, and consistency of practice. Almost all stakeholders seem to understand that land rights may be transferred between owners so long as there is some physical improvement to the land, such as a house, storage facility, or road. Preliminarily, it should be noted that this restriction is gravely inhibiting and wasteful. It has no grounding in international best practice. During this diagnostic, this restriction on land transfers was cited by various stakeholders as a non-negotiable reality, but not explained as having any purpose that cannot be achieved through less extreme and inflexible measures.

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14. The scope of this diagnostic did not include an assessment of the environment for Registering Property, one of the categories included in the World Bank’s Doing Business report. Indeed, considerable analysis by USAID and other donors has already taken place. (See, e.g., Simon Norfolk and Harold Liversage, *Land Reform and Poverty Alleviation in Mozambique* (undated; available at <http://www.sarpn.org.za/CountryPovertyPapers/Mozambique/LandReform/LandReform.pdf>); USAID/Nathan Associates, *Financial Sector Constraints on Doing Business in Mozambique* (June 2007); Klaus Deininger, *Soaring Global Interest in Farmland: How Can Mozambique Benefit?* (February 10, 2011) (presentation at World Bank Seminar on Growth, *supra* note 1)). Nonetheless, the general legal framework for land use is set forth at this report’s chapter on Dealing with Licenses.

15. See Ton Gia Huyen and Tran Thi Minh Ha, *Vietnam Land Administration: the Past, Recent and for the Future* (7th FIG regional conference, 2009).

Moreover, even where improvements have been made, the transfer process itself is untenable. As noted in one report and substantiated by comments throughout the AgCLIR diagnostic process, “A favored applicant may obtain authorization in one week to transfer a plot on the strength of erecting a modest perimeter wall, while a less-favored applicant may be denied authorization after erecting a major structure.” Worse, and, more commonly, “the application could languish indefinitely.”<sup>16</sup> Anecdotally, favored applicants today include those whose families had ample access to land rights prior to Mozambique’s independence in 1975, as well as the newer “elite” which holds significant political power. The dysfunction in the formal system has resulted in a complex informal market for land, which will complicate future reform initiatives.

The oft-cited difference in the amount of arable land in Mozambique versus the quantity that is actually cultivated (around 12%) seems to defy resolution, despite a consensus within *both* the business sector and civil society that reform is critical. Most of the country’s uncultivated land is somehow spoken for – often by locally empowered “speculators” who pay a negligible annual fee of \$.8/acre. Yet minimal demarcation and vague systems of registration render determination of the right to use the land, or the government’s authority to reclaim unimproved land, incredibly vague. Such opacity benefits a privileged class of people who are not widely perceived as committed to reform. A \$39 million commitment by the Millennium Challenge Corporation in 2007 for land reform in four northern provinces (Cabo Delgado, Nampula, Niassa and Zambezia) may contribute to gradual change in the land policy framework, certain land information systems and services, and access to land for investment.<sup>17</sup> To date, however, achieving public confidence in the government’s commitment to these reforms has proven elusive and the impact of the MCC’s investment is not clear. The program will be formally evaluated in 2013.<sup>18</sup>

Currently, investors seeking to access land for their projects must essentially “find it themselves.” While in theory such an approach is not a bad thing, it is almost impossible in practice given the lack of a transparent market for DUATs. Unless a potential buyer is especially well connected, it is enormously difficult to locate information about plot sizes, characteristics, opportunities, prices, and encumbrances. Investors generally go through a process in which central government authorities – whether from the Investment Promotion Center (CPI) or the Agricultural Investments Promotion Center (CEPAGRI) – directly contact provincial governors or district and municipal leaders on their behalf for information about what plots are available, if

#### **EMPHASIZING THE ENABLING ENVIRONMENT FOR AGRICULTURE: AGCLIR COMPLEMENTS OTHER MOZAMBIKAN INITIATIVES AND REPORTS**

- Estratégia da Revolução Verde (Green Revolution)
- Política e Estratégia Industrial (Industrial Policy and Strategy), including agro-industry (Ministry of Industry and Commerce)
- Strategy for the Improvement of the Business Environment
- Strategy for Southern African Development Community (SADC) regional integration
- Strategic Plan for Development of the Agricultural Sector (PEDSA) (Ministry of Agriculture).
- Action Plan for Food Production (PAPPA) (Ministry of Agriculture)
- The national agricultural development programs (PROAGRI)
- Strategic Plan to Develop Mozambique’s Agrarian Sector

any. Instead of a carefully vetted land bank that insiders and outsiders alike may review from remote locations, the acquisition process necessitates far more informal approaches to identifying land-use options, which in many cases may involve displacement of people. To a certain extent, CEPAGRI supports the development of individual

ing Business in Mozambique, supra note 14,

property improved from 149th out of 181  
2010 (Doing Business 2011).

mbique Land Reform (World Bank ARD

*Most of these programs are detailed by the World Bank’s report, Prospects for Growth Poles in Mozambique*

provinces' abilities to identify tracts of land for investment. Indeed, those provinces that take more seriously the need to effectively manage their land resources are those that will prove more competitive in the future.

At all levels, public servants appear to benefit from the opacity of Mozambique's land regime. This includes many bureaucrats who, in exchange for performing their inspection function, habitually demand an unauthorized per diem from individuals seeking to register property. It also implicates government officials whose stakes in *not* reforming the system include opportunities to become enriched through future land deals, particularly those involving the "extractive industries." In the meantime, civil unrest in 2010 called attention to land issues from the perspective of peasant farmers, who, upon the completion of certain formal or informal land deals, often find themselves cut off from resources, such as water, that they previously could access. Significantly, peasant farmers share the same grievance articulated throughout this diagnostic by agricultural entrepreneurs: they do not feel that they have transparent access to secure land rights.

The World Bank has observed three commonalities among emerging economies – chiefly in Latin America – that have fared better than others with respect to management of land.<sup>19</sup> First, national governments have comprehensively assessed and reported on the potential of their country's land and integrated that information into their development strategies, rather than allowing *ad hoc* requests or decisions by investors to determine the country's future. For Mozambique, such an assessment would require a frank, transparent, verifiable, and regular delineation of the personal holdings by national and regional officials in lands owned by the state. Second, relatively successful countries such as Chile, Peru, Costa Rica, and El Salvador have focused on securing and confirming existing property rights and allowing for their voluntary transfer. This effort includes defining mechanisms – including costs, taxes, timeframes, and other "countable" aspects – for transferring all or part of local land and investing in the clear demarcation of land. Third, countries that successfully manage their land implement transparent processes and effective mechanisms for monitoring compliance and providing redress for abuses. These processes included accessible auctions of public land; publication of contracts for transfer of public lands; and creation of incentives to avoid merely speculative land acquisitions. USAID has considerable experience throughout the world (both successful and unsuccessful) in taking on land reforms that reflect these priorities. This past experience must be taken into account when planning for the future.

The fact that land cannot be used as collateral in Mozambique troubles some observers as it diminishes access to credit. During this diagnostic, one bank representative asserted, "We cannot do agriculture in this country if the land belongs to the government." However, despite "Mystery of Capital"-inspired interest in land for this purpose, experience over the past generation shows that, especially for the poor, the ability to secure loans for formal title to

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19. See Klaus Deininger, Soaring Global Interest in Farmland: How Can Mozambique Benefit? (February 10, 2011) (presentation at World Bank Seminar on Growth, *supra* note 1. )

property is attractive in theory, but almost negligible in practice.<sup>20</sup> In fact, Mozambique has developed relatively robust systems for the use of moveable collateral in securing loans (buildings, farm equipment, livestock, inventory, personal vehicles, etc.), a mechanism that is perhaps more relevant to smaller landholders. That said, without transparency and conflict-free management of land registration, Mozambique's use of its remarkable land resources will continue to be hamstrung, particularly as the country seeks to build out its potential in commercial farming. Clarity in land use rights provides incentives for people to invest in their own productivity and future.

The implementation gap. Second, as noted at several junctures of this report, the legal framework for agribusiness is considered to be generally sound, notwithstanding a number of opportunities for reform, reconciliation, and refinement. Yet implementation and enforcement of the law are notoriously weak. In addition to agency capacity and human resources issues detailed in this report, this "implementation gap" is attributable to such factors as control-oriented management, a lack of consistency and trust in relations between the private and the public sectors, corruption at various levels of government, and the negative impacts of the state of "drowning in aid."<sup>21</sup>

With respect to the persistent issue of government control over the private sector's ability to flourish, the area of trade presents a compelling example of undue government intervention and undermining of entrepreneurial growth opportunities. Namely, despite improvements in the legal regime, Mozambique's government continues to micromanage the flow of goods into and out of the country. The country's failure to embrace international best practices in risk management – that is, a rational, data-driven process for selecting cargo for intensive examination, as opposed to inefficient inspection of all goods – has a major impact on the efficiency, time, and cost of doing business for traders of agricultural products and input supplies.

For example, in Mozambique, as in many countries, both importers and exporters must be licensed. Rather than using the data underpinning these licenses as a foundation for risk management, however, the government continues to require inspection of all imports and exports that move through formal trade channels. Moreover, all imports of agricultural products into Mozambique must be issued an import permit *each time*

#### CORRUPTION IN THE NEIGHBORHOOD: HOW MOZAMBIQUE FARES RELATIVE TO ITS NEIGHBORS IN THE CORRUPTION PERCEPTION INDEX

178 countries surveyed

COUNTRY	WORLD RANKING	SCORE
Botswana	33	5.8
Malawi	85	3.4
<b>Mozambique</b>	<b>116</b>	<b>2.7</b>
South Africa	54	4.5
Tanzania		116
		2.7
Zambia	101	3.0
Zimbabwe	134	2.4

**Source:** Transparency International, *Corruption Perception Index (2010)*. Scored on a scale of 1 to 10, with 10 being best (perceived as the least corrupt).

20. For a discussion of how and to what extent the poor are able to access credit by mortgaging their formally registered land, see USAID/ARD, Land and Business Formalization for Legal Empowerment of the Poor – Strategic Overview Paper (January 2, 2007) at Annex 3 (Markets, Assets and Using Land for Collateral) (citing and referencing critiques to Hernando de Soto's *Mysteries of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else* (2000), which links creation of private land rights to opportunities for the creation of capital in poor communities).

21. Sarah Lucas, "Mozambique Field Report" (Center for Global Development, December 2005).

before they are authorized entry, and the government insists that exporters must obtain a similar document. Quasi-monopolies are sanctioned in the business of importing and distributing agro-chemicals because government wants to exercise control over the use of these products through the companies that import and distribute them. Even though import duty rates are relatively low compared to many countries, the imposition of VAT and other taxes, combined with port charges, delays, and high transport costs, substantially increase the delivered cost of imported goods.

Furthermore, many laws in the trade arena, particularly those related to licensing, taxation, and labor relations, are implemented in a fashion that prioritizes government control over business friendliness. For example, the government has devised a range of incentives and stimulus programs that are designed to circumvent some of the effects of the negative business climate. These incentives include benefits such as a substantial reduction in the corporate income tax rate for a period of time; the duty- and tax-free importation of capital equipment; the tax-free and nominal duty for imported agricultural inputs, and the temporary importation of packaging material and other supplies that are subsequently exported. However, in many cases, the process of applying for and actually obtaining these benefits is so bureaucratic, onerous and time-consuming, that much of their anticipated benefits are lost.

Another factor that influences the business environment in Mozambique is a lack of consistency with respect to how the government treats the private sector, stemming from a lack of trust. The private sector appears to view government as obstructionist, unresponsive, and unhelpful, while government often views the business community as exploitative and abusive of labor. Mistrust creates uncertainty, which limits investment. While some degree of mistrust may be common to almost all countries and can be categorized as “healthy skepticism,” open, clear, and effective dialogue – where stakeholders genuinely listen and respond to one another – is the best way to overcome this problem. In this regard, the CTA, as the private sector representative, and the Ministry of Industry and Commerce, as the representative of government, routinely meet to discuss policy issues and the viewpoint of the private sector. Additionally, the Confederation of Mozambican Business Associations (CTA) participates in annual public-private dialogues with sectoral ministers, regional political officials, the Prime Minister, and even the President. Unfortunately, the current program of annual conferences, fed by interim working groups led by the CTA, has not proven effective in prioritizing reform and ensuring private sector participation in its implementation.

Corruption is a substantial issue as well. Mozambique is plagued by petty extortion by low-level government officials who require a facilitation payment to do their job effectively, or to look the other way after an imagined, or real, infraction has been committed. Also, in Mozambique, this blight seems to have been elevated to a higher level. For example, many stakeholders interviewed for this diagnostic believe that one reason why customs regulations are so draconian and inflexible is that private traders will invariably fall into the trap where an administrative error in the export-import process can only be remedied on a timely basis by a facilitation payment to the official who discovers the error. In general, there is a perception that many government officials have business interests within economic sub-sectors that fall within their span of control - such as some municipal authorities who have a financial interest in the transport company that serves the city. Conflicts of interest by government officials seem to be a common occurrence in Mozambique, including, as noted previously, in the area of access to land. The country's poor reputation in this regard contrasts sharply with neighboring Botswana and South Africa, where eliminating official corruption has been more of a priority, and, in turn, opportunities for private sector growth are far greater.

Finally, the abundance of donor initiatives in Mozambique warrants special scrutiny. This diagnostic found that a number of public institutions, ranging from extension services to local

economic development agencies, have been inclined to relinquish their responsibility for providing support and services to the agricultural sector, relying instead on donor support to fill an apparent void. During this diagnostic, a common refrain from public-sector agencies (both national and local) was that improvement of their functions is impossible without additional significant donor support. For example, during this diagnostic, few donors could provide tangible examples of how their work directly with or on behalf of farmers intersects with the work of Ministry of Agriculture extension officers. Some suggested that extension officers are discouraged by their relative lack of resources, compared to those available through donor-funded programs. Others said that public extension officers are poorly managed and do not step up to opportunities they may have to strengthen their own offerings. At worst, donors and others are bypassing extension officers as “more trouble than they’re worth” rather than integrating extension agents into their initiatives. That said, in an effort to improve Mozambique’s private and public extension regime, the United Nations’ International Fund for Agricultural Development (IFAD) provides financial support through two key programs: (1) PRONEA – a National Extension Program, which implements an extension master plan across Mozambique and works with farmers to increase production and productivity through access to technology; and (2) PROMER – Rural Markets Promotion Program, which supports access markets in the provinces of Zambezia, Cabo Delgado and Niassa.

Though most stakeholders welcome the support of donors, they can, in the long run, experience negative effects of over-intervention. For example, when donor money is plentiful, there is a tendency to “farm projects” rather than land, as each new project may have a different agricultural direction. If new funds can reliably be expected to come along every three to five years, there is an understandable tendency on the part of farmers and their associations to split their attention between maximizing earnings from their land and maximizing income from grants and program support. This dual-track strategy leads to conflict, which in turn leads to de-emphasis of the production dimension in favor of the donor dimension. Dependence upon donor support can result in the development of capacity that cannot be sustained when support is withdrawn. Donors, public institutions and the private sector must collaborate to consider both the positive and negative impacts of their interventions and identify the most sustainable capacity-development strategies.

The plentitude of donors in Mozambique also raises the question of how knowledge resources are ultimately used by local stakeholders, and just as critically, by the donors themselves. For example, untold numbers of donor reports have been issued since Mozambique has undergone its economic transformation. The reports have the potential to provide great value – if and when they are critically assessed by both local constituencies and donors, and where necessary, put into action. This does not happen often enough.

## **I.5 HOW THIS REPORT IS STRUCTURED**

Each chapter of this report is structured the same way. Following an introduction, each has four substantive sections (Legal Framework, Implementing Institutions, Supporting Institutions, and Social Dynamics), which are followed by recommendations.

**Legal Framework.** The chapters first examine Mozambique’s laws and regulations that serve as the structural basis for the country’s ability to achieve and sustain market-based development in the agriculture sector. They discuss the following questions: How accessible is the law, not only to elite, well informed groups, but also to less-sophisticated actors, rural constituencies, or foreign investors? How clear are the laws, and how closely do they reflect emerging global standards? How well does law respond to commercial realities faced by



stakeholders in the agriculture sector? What inconsistencies or gaps are present in the legal framework? This section examines key laws and regulations that apply throughout the economy and additional laws and regulations underpinning the agriculture sector, specifically.

**Implementing Institutions.** Next, the chapters examine those institutions that hold primary responsibility for implementation and enforcement of the legal framework. These institutions include government ministries, authorities, and registries, or, in certain cases, private institutions such as banks and credit bureaus. In addition, courts are examined with respect to their effectiveness in addressing disputes that arise in the agriculture sector. Again, the indicators seek to uncover how these implementing institutions function not merely with respect to mainstream business interests in the capital, but also in rural areas and agriculture-based communities.

**Supporting Institutions.** The chapters then look closely at those organizations, individuals, or activities without which the agriculture sector in Mozambique cannot be fully developed. Examples include farmer associations, rural banks, professional associations, agriculture and law faculties, the media, and donors. The relative awareness of law and practice on the part of each institution is examined, along with the specific ways in which institutions increase public and professional awareness, work to improve the economic performance, and otherwise serve their constituencies.

**Social Dynamics.** As the final point of analysis, the chapters discuss key issues that impact the environment for growth in the agriculture sector. Roadblocks to reform, in particular, are considered, including those entities that may be undermining change. This discussion also identifies significant opportunities for bolstering the environment for agricultural enterprise – such as champions of reform or regional initiatives – as well as matters of access to opportunity and formal institutions. Social dynamics also concern such important matters of gender, human capacity, and public health, each of which may have a significant bearing on how the business environment truly functions. Indeed, often a full understanding of legal and institutional issues cannot be achieved without a nuanced consideration of a country's social dynamics.

**Recommendations.** Following this four-part analysis, each chapter sets forth a set of recommendations. These are drawn from the key findings in each chapter and reflect current reform capacities, opportunities, and evidence of will to reform. Some of the recommendations within the chapters may overlap – that is, some may be consolidated into a single reform initiative covering two or more topics – and all turn on the priorities and preferences as enunciated by the Mozambican government itself. The recommendations in this report are intended to serve, among other functions, as a threshold list for donor coordination of immediate initiatives and preparation of scopes of work.

**AgCLIR Scores.** With respect to each area of inquiry, this diagnostic uses a process of reviewing and scoring key questions to develop a thorough analysis. Once as much relevant information as possible is gathered – from written sources, meetings and interviews, and consultation among colleagues – each of the key questions is scored, based on the assessor's best estimate of the issue at hand. To help an assessor determine a score, between 3 and 15 supporting questions accompany each key questions. These questions themselves are not scored, but are intended to guide the assessor toward a consistent, fact-based judgment from which the key indicator score is then derived. The specific questions considered in the scoring process can be found at <http://bizclir.com/galleries/publications/AgCLIR%20Indicators%202010.pdf>.

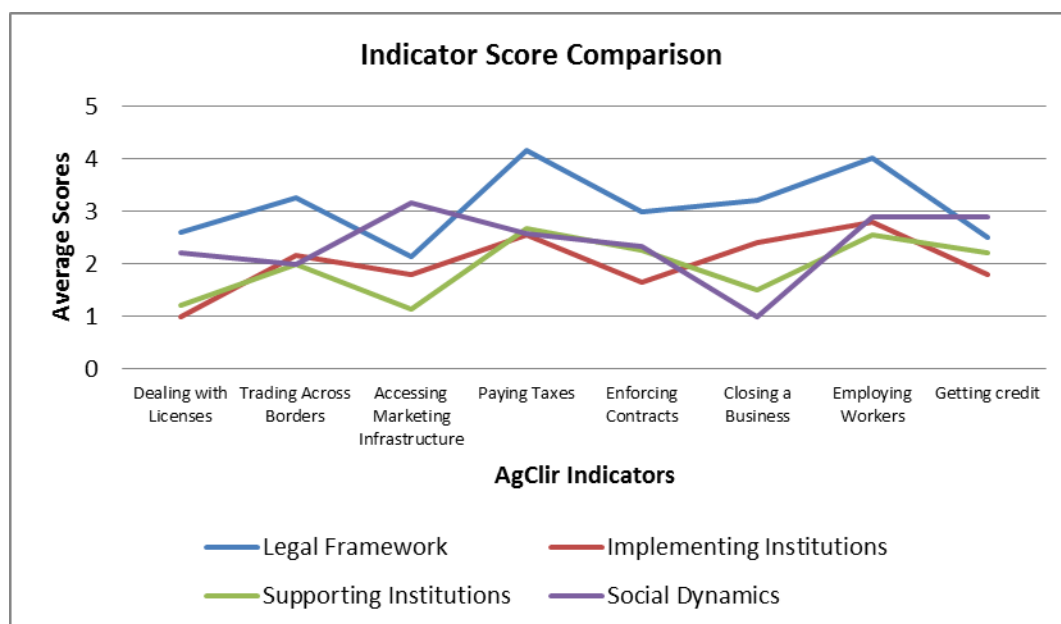
The scores are not intended to serve as a stand-alone, number-based pronouncement on the state of the agriculture sector in Mozambique. Rather, they should simply be considered in conjunction with this report's narrative as a means of understanding the status of certain key

indicators of a healthy legal and institutional environment for agricultural enterprise and identifying priorities for reform.

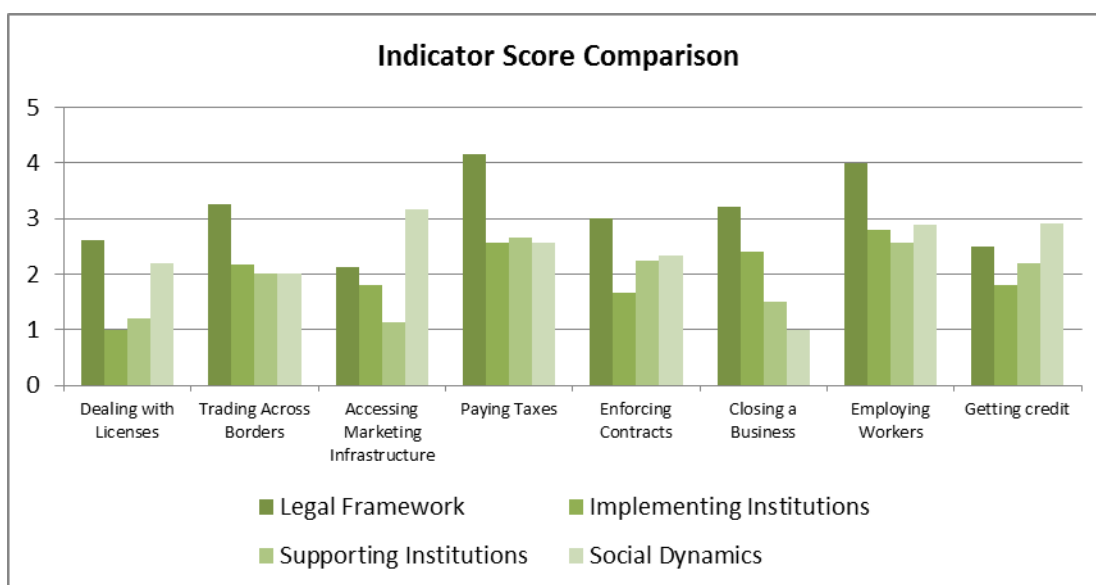
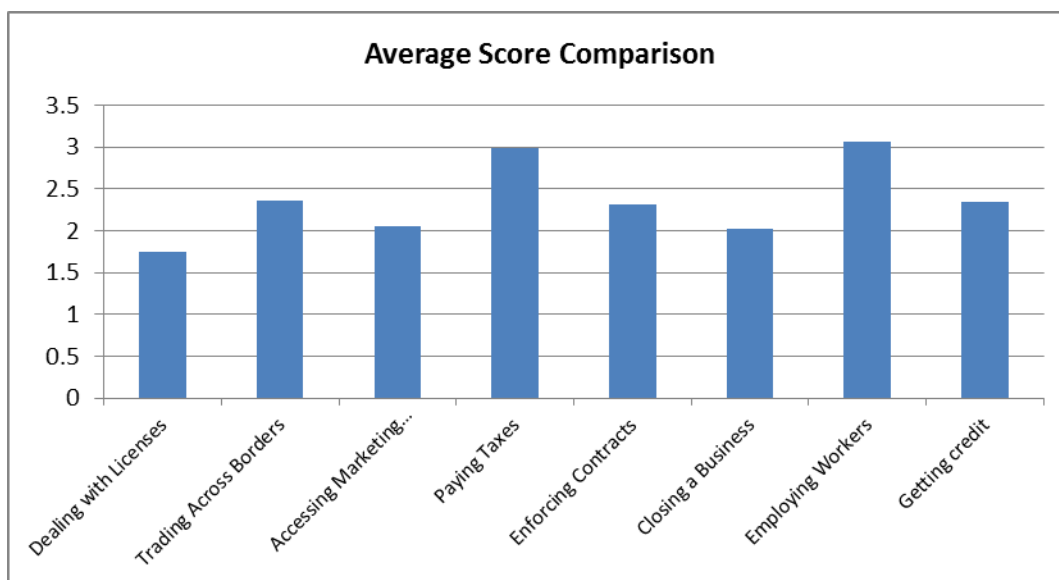


## I.6 SUMMARY OF DIAGNOSTIC METRICS

The combined quantitative and qualitative aspects of this diagnostic found that Employing Workers is, overall, the strongest of the areas studied, while Dealing with Licenses is the weakest.<sup>22</sup> Moreover, the diagnostic identified the legal frameworks underlying the areas studied as better off than the other aspects considered, with the supporting institutions found to be in the poorest shape.



22. It is worth noting that the AgCLIR methodology has undergone significant review since the implementation of this diagnostic, with changes made to all of the questions asked during the diagnostic, as a reflection of findings from prior reports. The Employing Workers section, for example, will be much more oriented in future reports to employee skills and worker opportunities both in the formal and informal sectors. Thus, while AgCLIR has never emphasized “scores” as a key component of its analysis, the scores here should be regarded as far less important than the content of the analysis itself.



As reflected by the indicator chart above, the AgCLIR scores suggest significant room for improvements across the board. The legal framework is currently the strongest framework area for paying taxes. Social dynamics are also relatively strong in all areas except for closing a business. However, supporting institutions proved to be the weakest area, suggesting a need to strengthen available resources to assist with the agribusiness enabling environment and increase awareness of these resources.

## 1.7 AGRIFUTURO'S VALUE CHAIN AT THE GLANCE

The USAID-sponsored Mozambique Agribusiness and Competitiveness Program (AgriFUTURO), established in late 2009, works to increase Mozambique's private sector competitiveness by strengthening targeted agricultural value chains. AgriFUTURO focuses on

value chain development as a means of creating incentives to improve the enabling environment and expand and strengthen business development services. It builds linkages between agribusinesses and financial services providers, and increase and strengthen public/private partnerships.

Upon establishment, AgriFUTURO identified nine value chains (maize, bananas, sesame, soybean, mangos, forestry, cashews, pineapples and groundnuts) that have the greatest potential to increase the long-term competitiveness of Mozambique's agricultural businesses. Each of the selected commodities faces growing demand in markets that are accessible to Mozambican producers. For most of these value chains, the growing economies of the Middle East and Asia present lucrative markets with rapidly growing demand. These conditions offer new opportunities for Mozambique to expand its production and export of these products.

With respect to Mozambique's lack of a broad, long-term vision for competitiveness and a need to speed up enabling environment reforms at all levels, AgriFUTURO has: (1) identified relevant stakeholders, completing policy analytical work in the different value chains; (2) assisted the private sector on the design and implementation of the new cooperative law regulation; (3) taken initial steps toward establishing integrated value chain associations (VCAs) in the cashew, fruit and forestry sectors; (4) brought together the main players in the industry to discuss the challenging issues for the value chain such as sanitary and phytosanitary (SPS), fruit fly surveillance, food safety (aflatoxin), and certification.

Most rural infrastructure and business development services (BDS) currently available to Mozambique's private sector are provided by public-sector institutions or donor-funded programs. Private provision of rural infrastructures and BDS, particularly for agribusiness and especially in the target corridors, is relatively limited. AgriFUTURO works with the private sector to address the lack of agribusiness infrastructures. The project has: (1) identified zones with the potential to generate a critical mass of product that would support infrastructures, BDS and output markets; (2) identified and recruited service providers in those areas; (3) conducted preliminary capability and needs assessments with those service providers; and (4) explored opportunities for strengthening and expanding their activities.

With respect to the flow of financing services to the agribusiness sector, AgriFUTURO works to build a range of financial instruments and mechanisms to reduce risks, reduce transaction costs, and increase confidence along value chains and within the private sector. To that end, AgriFUTURO has: (1) identified new sources of funds for agribusinesses, and approached Standard Bank, BCI and BIM, and MOZABANCO to discuss the details of the use of their funds; (2) worked with USAID's Development Credit Authority (DCA) guarantee program involving two commercial banks (*Banco Oportunidades* and *Banco Terra*); (3) developed a program with *Banco Terra* and the *Apoio as Iniciativas Privadas do Sector Agrário* (ADIPSA) to support financially commercial emergent farmers; and (4) promoted linkages between *Banco Terra* and project beneficiaries.

AgriFUTURO also facilitates the formation of public-private partnerships (PPPs) by developing and implementing the Global Development Alliances and other partnerships. Specifically, AgriFUTURO has signed PPP agreements with agribusinesses projects operating in two major agribusiness corridors.

## 2. DEALING WITH LICENSES

### 2.1 INTRODUCTION

Since 1990, the liberalization of Mozambique's economy has included a transformation of its legal framework, including its regime for business licenses and other prerequisites to business activity. Changes have been made to the country's constitution, its elections, the centralization of government functions, anti-corruption practices, and management of natural resources, among many others. Notwithstanding these changes, Mozambique's economy remains significantly rooted in the informal sector, with the issue of licenses cited as one reason why informal enterprises resist joining the formal sector. A silent alliance between the formal and informal economies has made this situation difficult to change.

There is a broad range of licensing and other regulatory authority involved with business activity in Mozambique. The prevailing ideology in the country and that of lawmakers has changed dramatically over the years since the country's independence; from a socialist and centralized oriented economy to a free market. In practice, however, certain practices remain that do not square with the country's commitment to free-market activity. As one example, companies in Tete are required to have a physical presence in the province, in order to obtain a business license. In other provinces, licensing procedures for relatively un-complex endeavors take far more time than is warranted.<sup>23</sup>

Government and public perception about the role of law and regulation also has changed during the same period. There are still inconsistencies in some existing laws. Often, a significant amount of time elapses between the enactment of a new law and its implementation, thereby creating discrepancies. In addition, some existing laws allow for different interpretations across different regions, thereby leading to divergent implementation procedures. For example, some benefits provided by law do not equally benefit private entities operating at a city, district, or community level. Some lawmakers ignore the reality surrounding the enabling environment in more rural areas, where legalization or business registration cannot happen for the simple reason that the required public institutions are not physically present.

In addition to difficulties in implementing laws across the country, some laws overlap, making them more complex to interpret and implement. The Environment Law, Land Law, Wildlife Law and Fiscal Benefits Law all provide overlapping and often contradicting information.

Not only do business entities face difficulties how national laws are interpreted locally, but also they find that these laws often do not match the reality on the ground. For instance, many Mozambicans have not been issued an identification document which is necessary to open a bank account or to obtain services from public entities. Physical working conditions where public services are provided often are not adequate, since they frequently lack basic information technology infrastructure. Therefore, services cannot be provided in a timely manner.

From the point of view of a market economy, laws must be evaluated by their practicability and ease of use. Ultimately, a better-functioning market should be the final criteria to evaluate those

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23. See World Bank, *Prospects for Growth Poles in Mozambique* (August 2010) at 18, 60, 87, and 103.

laws. From a private business perspective, lawmakers in Mozambique seem to be more concerned with protecting public sector authority and collection of fees than with easing the burden on the private sector.

This chapter covers a variety of areas pertaining to Mozambique's licensing regime, including laws and regulations that can make the "up-front" difference in whether an entrepreneur may move forward with his or her business. These range from the licensing and classification of businesses to certification and permitting of inputs (specifically, seed, fertilizer, and pesticides) and regulations of particular interest to processors, transporters, retailers, or service-providers. Under the AgCLIR scoring system, Dealing with Licenses shows some of the lowest scores of the diagnostic, with Implementing Institutions for licensing showing dramatic need for improvement in particular.

## 2.2 LEGAL FRAMEWORK

**Company registration.** Mozambique's Commercial Code, as approved in 2005 and amended in 2009, is the country's primary legal instrument that guides commercial activities. Three kinds of commercial companies are anticipated by the commercial code: *Sociedade por Quotas (Ida)*, *Sociedade Anonima (SA)*, and *Sociedade Unipessoal*. The basic procedures to register and license these companies, which vary in terms of governance but provide for the limited liability of company owners, are almost the same across all three types of commercial companies.

The first step to register a company is an official request for the company name. The proposed company name must not already exist or create possible confusions with already existing firms. The next step is to register the company statutes with a notary if these exist. Copies of this registration will allow investors later to request a publication of the statutes in the Official Gazette and, its registration with *Conservatória dos Registos Comerciais*.

All these steps require payment and, during this process, additional information might also be required, such as shareholders identification, the company tax payment number (*Número Único de Identificação Tributária – NUIT*), and the accountant name. This process takes several days or months, and delays might occur because of different reasons. Once the registration is complete the licensing process will follow or will be initiated. This new phase also involves different government institutions, and payments of fees mainly at the Ministry of Industry and Commerce.

Under the 2009 Foreign Exchange Act (Lei no. 11/2009 de 11 de Março), Article 9 requires "resident entities" to declare earnings or funds that are held abroad and to remit to Mozambique receipts from exports of goods, services, or foreign investment. In December 2010, the Council of Ministers approved a set of regulations, including a provision relating to Article 9 of the Act,

### KEY LAWS

- Decreto Lei n° 2/2005, December 25<sup>th</sup> (approves the Commercial Code)
- Decreto-Lei n.° 2/2009, April 24<sup>th</sup> (Changes Commercial Code)
- Decreto Lei n° 2/2008, March 12<sup>th</sup> (simplify Licenses)
- Decreto Lei n° 49/2004, November 17<sup>th</sup> (Licenses Commercial Activity)
- Decreto Lei n° 39/2003, November 26<sup>th</sup> (Licenses Industrial Activity)
- Decreto Lei n° 58/99, September 8<sup>th</sup> (Classify Economic Activities)
- Lei n° 23/2009, September 28<sup>th</sup> (Cooperatives Law)
- Lei n° 22/2009 September 28<sup>th</sup> (Consumer Defense Law)

requiring corporations to repatriate funds to Mozambique and convert them to meticaís (MT). This type of regulation is often referred to as an “export surrender” requirement and becomes effective on July 2011. In addition, through the law, the list of “current invisible transactions” is supposed to have been increased, which means that fewer transactions to beneficiaries off-shore should be subject to central bank approval. (The list has not yet been published). The law will also require commercial banks to grant approvals for specialized import/export documentation. Commercial banks will therefore have to implement substantial controls to be able to grant approval, and it is believed that these controls will lead to additional costs for the private sector.

Due to the instability of the metical and the fear within the private sector of experiencing significant losses as a result of this law, the private sector has expressed concerns about costs and risks that businesses and investors may face as a result of the compulsory surrender of export earnings.

This law also has an effect on the exchange rate, effectively strengthening the metical. A stronger currency helps to control domestic inflation and makes purchase of domestically produced goods more affordable, but it also comes at a high cost. Stronger currency can have a negative impact on exports, lower investment from outside the country, and make imports less expensive for consumers. Artificial strengthening of the metical, as opposed to allowing the market to determine its true value, could result in long-term problems with respect to how both inside and outside investors view Mozambique.

#### **WHY ARE LICENSES (AND SIMILAR “UP-FRONT” REGULATORY ACTIVITIES) IMPORTANT?**

Licenses, permits, and certifications play an important role in regulating business activity. They define which behaviors are acceptable and which are not. Licenses are often earned only after the seeker has demonstrated his or her understanding of the conduct that must be observed in order to carry out the activity. Licenses allow regulators to track critical data, such as how much of a certain product is getting used, or how much of another product gets exported.

Licenses provide for sanctions in the event of non-compliance – that is, they can be suspended or withdrawn in the event that their terms are violated. Licensing, along with related tools of regulation, allows governments to keep bad drivers off the road, unhealthy food off the table, and reckless pesticide applicators out of the field. Provided they do not unduly restrict access into a sector and do not stifle

**Business licenses.** Following the registration processes, businesses may then seek to undertake their licensing and regulatory obligations, which are governed through an extensive number of laws. In 2008, the government introduced improvements to address the needs of small businesses. Decree No. 2/2008 established a more simplified licensing process, allowing small businesses to become established more easily and quickly. For small businesses, the decree provides that one single place – “Balcão Único” or “Single Window” is to be visited in order to get the necessary licenses to operate.

After registering a company, larger businesses and foreign investors are expected to start their businesses through CPI (Centre for Promotion of Investment). The Investment Law of 1993 and its complementary rules establish the legal framework in this matter.

There is an ongoing debate concerning foreigners’ acquisition of urban property. After independence, the government nationalized many private properties, including property owned

by foreigners.<sup>24</sup> Today, foreigners (including all companies with less than 51% national shareholding) cannot own property that has belonged to the state or that was nationalized.

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24. See Law Decree n° 5/76, February 5th; Law Decree n° 5/91 January 9th; Ministerial Diploma n° 50/94 of 13 April 13th; Law Decree n° 2/91, January 16th; Ministerial Diploma n° 97/92 July 8th; and Ministerial Diploma n° 152/92 September 30th.



Four main laws govern the licensing process to start a business in Mozambique:

- (1) Law Decree n° 39/2003, November 26<sup>th</sup> regulates Licensing of an Industrial Activity
- (2) Law Decree n° 49/2004, November 17<sup>th</sup> regulates Licensing of a Commercial Activity.
- (3) Law Decree n° 2/2008, March 12<sup>th</sup> simplifies the licensing procedures for small businesses
- (4) Law Decree n° 58/99, September 8<sup>th</sup> classifies all economic activities.

In addition, Law Decree n° 15/2006, July 22<sup>nd</sup> establishes hygiene and sanitary standards for businesses. There also are restrictions imposed on tobacco-selling and consumption established by Law Decree n° 11/2007, May 30<sup>th</sup>, while Law Decree n° 176/2001, November 28<sup>th</sup> regulates tobacco production and concessions. Tobacco exports are free while imports are restricted only to tobacco companies. Exports require a phytosanitary certificate and a certificate of origin.

Acquiring necessary licenses is a time-consuming process. Companies must submit their formal requests to the Ministry of Industry and Commerce or to the provincial governor, depending on the level of authority required to issue such a license. For smaller commercial activities, licenses can be obtained at the district and municipal levels.

In Mozambique, licenses are known as *Alvará*. To obtain required *Alvará*, several steps and procedures are required, involving various government institutions such as the Health Department, the Ministry of Industry and Commerce, the Fire Department, the Labor Ministry, and environmental authorities. Even representatives of municipalities may become involved. All agencies are expected to inspect the installations where the new company will operate. The inspectors will verify in place if all other applicable laws are being obeyed. They are supposed to produce a fact-finding report that will finally recommend or not the issuance of the license (*Alvará*) by the Provincial Directorate for Commerce and Industry or by the Ministry of Industry and Commerce at the central level.

The rules for industrial licensing establish four main categories of licenses; of those, two of them are simplified. Three criteria established by decree in 2003 are also used to classify an industrial company according to its size (large, medium, small, and micro), total initial investment, expected electricity consumption, and number of employees. A company should conform simultaneously with two of those criteria to be classified as such. For example, companies investing \$2.5 million, hiring 126 workers and expecting to consume 100Kva of electricity will be classified as a medium-sized company. By declaring the need for only 124 workers, the same company can classify as a small-sized company.

Additional rules and procedures pertaining to business activity need to be fulfilled. Among them, all import and export licenses are issued by the Ministry of Industry and Commerce. To operate, a medium-sized agro-industry will require several additional steps and documents after receiving its *Alvará*. Access to land (DUAT), construction project details, and an additional construction license will be required. Additionally, an Environment Impact Evaluation will be requested of all major national or international projects as established by the Environment Law and its implementing decree.

For micro-industries (investment of less than \$25,000, less than 10 Kva consumption and maximum 25 workers), the licensing process has been simplified. Investors are requested to

prove that the premises where they expect to work are in accordance with the kind of industrial activity for which they seek a license. Additionally, the company must submit appropriate documents and, if authorized, the Alvará will be issued immediately, pending final inspection by relevant authorities. Businesses are also expected to comply with other laws relating mainly to the commercial code, taxation code, labor law, construction, access to natural resources, and environment protection.

Mozambique also has an extensive number of laws relating to Zones of Accelerated Development and Free Trade Zones. Investors have specific fiscal and duty-free benefits and need to fulfill specific requirements normally accepted all over the world. Currently, the options are a Free Trade Area (Maputo Province) and a Zone of Accelerated Development (Nampula Province). Both are close to port facilities. Free Trade Area and Zones of Accelerated Development are managed by a public entity (GAZEDA) which analyzes and authorizes investment requests. Given that, by law, these two legal concepts are developed and established, there should be a concerted effort to make them more effective.

To import or export, businesses must apply and pay for specific licenses according to designated categories. In addition, Law Decree nº 56/98, November 11<sup>th</sup> aims to simplify legal procedures and all paperwork required (*Documento Único*) for imports made by small-scale traders. All importers are expected to pay duties but several exemptions have been authorized by the government in order to decrease the costs of raw materials and equipment. Normal import duties are calculated over CIF value and they vary from 2.5% (raw materials) to 20% (consumption items). Duties over imported consumption commodities were reduced by 5% by Law Decree nº 3/2007, February 7<sup>th</sup>. However, imports have to pay an additional 17% for VAT, and some so-called luxury items pay additional average taxes of 20%. Tobacco imports are charged an additional 65%.

The central bank, Banco de Moçambique, also is attempting to simplify procedures and issuing new specific regulations (Law nº 11/2009, March 11<sup>th</sup>) (*Aprova a nova Lei Cambial e revoga a anterior Lei n.º 3/96, January 4<sup>th</sup>*) that simplify international financial transactions.

While most of the rules and procedures in place are necessary and make sense, the problem remains around the attitudes of public servants involved in providing those services in a timely and efficient way. The way different public departments transfer information to each other and cooperate is also a major problem.

Environmental protection is an international and national concern and there is a growing awareness about its importance and consequences if disrespected. Mozambique's legislation is extensive in this matter.

**Access to land and forestry.** Despite being endowed with natural resources,

#### KEY LAWS PERTAINING TO LAND

- Lei nº 19/97, October 1<sup>st</sup> (Land Law)
- Decreto nº 66/98 December 8<sup>th</sup> (Rules Land Law)
- Decreto Lei nº 1/2003, February 18<sup>th</sup> (Amendments to Land Regulation Law)
- Decreto Lei nº 60/2006, December 26<sup>th</sup> (Rules Urban Soil)
- Lei nº 10/99, December 22<sup>nd</sup> (Forestry and Wildlife Law)
- Decreto Lei nº 12/2002, June 6<sup>th</sup> (Forest and Wildlife Law Regulation)
- Decreto Lei nº 11/2003, March 25<sup>th</sup> (Amendment to Regulation on Forestry and Wildlife)
- Decreto Lei nº 96/2003 July 28<sup>th</sup> – Regulation of Protected Species

Mozambique is not automatically perceived as a foreign investment destination. Cheap labor and land are not comparative advantages. Human capital capacity and productivity are low even in regional terms, and the lack of basic infrastructure makes investments in agriculture expensive and risky.

In Mozambique, land and natural resources are all state-owned. A number of laws and policies set forth the legal context and background for the land system in Mozambique. The National Land Policy (*Política Nacional de Terras*, established by Resolution nº. 10/95 October 17<sup>th</sup>) provides all guiding principles around public and private-sector responsibility. The resolution states clearly that its aim is “to ensure the rights of the Mozambican people to the land and other natural resources, while promoting investment and the responsible and equitable use of these resources.”

Land rights acquisition is ruled by the Land Law (Lei nº 19/97, October 1<sup>st</sup>); and its implementing regulation (Decreto nº 66/98 December 8<sup>th</sup>). Other legislation (Decreto Lei nº 1/2003, February 18<sup>th</sup> and Decreto Lei nº 60/2006, December 26<sup>th</sup>) regulates land access and registration for several uses including urban residence and construction.

The right to use land is provided by the state through the Land Law and is known as the “*Direito de Uso e Aproveitamento de Terra*” or “DUAT” (Right of Use and Enjoyment). These land concessions are authorized at different government levels according to the size of land area requested. Access to urban land is ruled by Decreto Lei nº 60/2006, December 26<sup>th</sup>, and municipalities are involved in this process. Land concessions (DUAT) for agriculture use of an area with less than 1,000 hectares are authorized at the provincial level. Above 1,000 hectares and less than 10,000 hectares, DUATs are authorized at the Ministry of Agriculture. Areas of more than 10,000 hectares are overseen by the Council of Ministers. Land concessions to companies require the formal registration of the company.

In Mozambique, relations between the state and community leaders are also regulated by law (Decreto nº 15/2000), and this also has to do with the government’s role in the management of land issues and conflicts. Only Mozambicans can acquire DUATs by customary or “good faith” occupation. Diploma Ministerial nº 29-A/2000, March 17<sup>th</sup> represents an attempt to “separate” those areas occupied by communities and inherited by their own traditions and those occupied “in good faith” by nationals for more than 10 years by adding that “delimitation and/or demarcation of areas occupied by local communities does not impede the realization of other economic activities or investments, as far as they receive the consent of the communities.”

Law Decree nº 15/2000, June 20<sup>th</sup> recognizes communities’ right to land if inherited by traditional rules. Few cases have occurred where community consent to land allocation for private investment has resulted in a satisfactory outcome to both sides. By resolution from the Council of Ministers (Resolução nº 70/2008, December 30<sup>th</sup>), new and more demanding criteria were established in order to satisfy requirements for land concession above 10.000 hectares.

Government Resolution nº 8/97, April 1<sup>st</sup> approved a Forestry and Wildlife Development Policy and Strategy (*Política e Estratégia de Desenvolvimento de Florestas e Fauna Bravia*), providing the framework for the involvement of the government, private sector, and communities in social and economic development through the protection, conservation, and sustainable use of forestry and wildlife resources. Additional laws (Lei nº 10/99 December 22<sup>nd</sup>; Decreto Lei nº 12/2002 March 25<sup>th</sup>; Decreto Lei nº 11/2003 March 25<sup>th</sup>; Decreto Lei nº 96/2003 July 28<sup>th</sup>) rule access to forests and wildlife, protect wild species, and establish guiding principles for the protection, conservation and sustainable use of forestry and wildlife resources in order to achieve economic and social development based on an integrated sector management system.

The Land Law itself applies to both urban and rural land but most of the existing regulation applies principally to rural land.

The legal framework pertaining to forestry and wildlife also provides for the creation of protected areas, such as national parks and reserves, and areas of historic or cultural value. Protected areas include areas set aside for the preservation of nature and areas of importance for national defense. While procedures for such concessions are not detailed in legislation, it is not possible to acquire a DUAT in either type of protected area.

Divergent perceptions about the economic value of land between communities and entrepreneurs make agriculture development a difficult task and dramatically increase corrupt practices. Throughout this diagnostic, stakeholders repeatedly asserted that Mozambique's public sector elite increase their wealth through corrupt and often questionable practices around the allocation of natural resources mainly for foreign investors.

Private national and foreign investors do not always get the investments they agreed to with the government after accessing the land they requested. Land reacquisition by the state is not always a straightforward and efficient procedure. All land concessions in rural areas require a previous consultation with local communities. The agreements reached at that level must be respected by investors, because failure to fulfill them can result in the cancellation of the concession. Investors are encouraged to work and cooperate with communities and engage in social activities that might improve living conditions at that level.

The economic activities that justify a DUAT must be undertaken in accordance with the operational plan presented as part of the land application process and in accordance with the relevant sectoral, environmental, and health and safety legislation. The DUAT may be cancelled for non-compliance with the terms on which it was issued or it may be revoked for reasons of public interest. If revoked, the government must provide compensation. There are authorization fees and annual fees associated with the DUAT and differentiated rates apply to national and foreign investors as well as to different areas of the country and to different types of land use.

Access to land-related information is a challenge in Mozambique. Not all public offices (mainly at the provincial and district levels) dealing directly with the public have all the main legal written procedures visible or accessible. When a visit by a public servant to a plot or to a farm is requested by an applicant of a DUAT, there is typically a request for a per diem, even though this visit should be part of the government service.

**Access to water.** In Mozambique, despite relatively generous water resources compared to many other African countries, access to water is enormously difficult and per capita consumption of water is among the lowest recorded in the world. A multi-donor project (the Water Supply and Sanitation Project) aims to help improve the country's access to safe water and sanitation, and several other initiatives, including the Mozambique Water Supply Investment and Assets Fund and efforts supported by the British government (WATERAID) and the Millennium Challenge Corporation, strive to make water safer and more accessible. In fact, since 1995, nearly 80% of all water-related investments have been funded by donors.

Licensing of water access is just one part of the country's overall water strategy, which is beyond the scope of this report. In August 2007, Mozambique's government approved a Water Resources Strategy. This document states that Mozambique has 13 major watersheds, south to north, including the basins of Maputo, Umbeluzi, Incomati, Limpopo, Save, Buzi, Pungoe, Zambezi Licungo, Ligonha, Lurio, and Messalo Rovuma. Mozambique's Water Policy is approved by a Resolution (Resolução nº 46/2007, October 30<sup>th</sup>) and the Policy on Water Prices is established by Resolution nº 60/98, December 23<sup>rd</sup>, and there is a Council to Rule Water Supply.

Mozambique's Water Policy is approved by a Resolution (Resolução nº 46/2007, October 30<sup>th</sup>) and the Policy on Water Prices is established by Resolution nº 60/98, December 23<sup>rd</sup>. Given the need for intersectoral coordination of issues pertaining to water, an institutional framework was established through the National Water Council (CNA - Conselho Nacional de Águas) that serves as an advisory committee designed to advise the Government on issues related to water management and the implementation of water policy.

Access to sea water (Lei do mar nº 4/96 January 4<sup>th</sup>) or water for consumption (Lei de Aguas nº 16/91 August 3<sup>rd</sup>) is also regulated by law. Mozambique has an extensive coastline with good conditions for aquaculture and it shares most of its river and water basins with its neighbors. Water is a sensitive resource that sometimes creates conflicts among communities and countries. Only three existing water basins in Mozambique are fully owned by the state. Some of the existing river basins are already being managed under government agreements with neighboring countries. Local water management in Mozambique requires a more comprehensive and integrated management approach in order to preserve resources and protect communities and businesses.

The National Directorate of Water in the Ministry of Public Works and Housing is in charge of policy for water supply. In urban areas, a public-private partnership has been established, whereby assets are owned by the government and operations are managed by the private sector under a concession, lease or management contract. The Water Supply Investment and Asset Fund - the Fundo de Investimento e Património do Abastecimento de Água (FIPAG) – is an asset holding company in the urban water sector through which the operation of water services was delegated to private lessees. In rural areas, management of water is far less organized and consistent in administration.

Mozambique's water sector is regulated by the Conselho de Regulação do Abastecimento de Água (CRA), which sets tariffs and service-quality targets, monitors compliance with the targets, reviews investment programs, and hears complaints by users and municipalities. CRA's main mission is "to ensure a balance between the quality of the service, the interests of consumers, and the financial sustainability of the water supply systems." Yet specific information about licensing and tariffs is not readily available, thus clouding the environment for doing business. Like many areas of licensing and regulation, what is lacking in Mozambique's agricultural sector are consistent, transparent, user-friendly guides about public access to water, whether for private consumption or for their businesses. Farmers cannot plan responsibly for water use, and municipalities cannot expect consistent and appropriate payment of water tariffs. Not unlike the issue of land, regulatory issues pertaining to water are not sufficiently clear, accessible, and friendly to entrepreneurs who seek reasonable information.

Access to sea water (Lei do mar nº 4/96 January 4<sup>th</sup>) or water for consumption (Lei de Aguas nº 16/91 August 3<sup>rd</sup>) is also regulated by law. Mozambique has an extensive coastline with good conditions for aquaculture, and the country shares most of its river and water basins with neighboring countries. Local water management in Mozambique requires a more comprehensive and integrated management approach in order to preserve resources and protect communities and businesses.

**Bio-security.** By March 2001, an inter-ministerial group of experts (GIIBS – Bio-Security Inter-Institutional Group) was established to analyze and propose a new institutional and bio-security legal framework. Mozambique's government recognizes that new biotechnologies can significantly improve food production rates and food security. However, existing laws prohibit the use of genetically modified organism (GMOs). Mozambique needs and expects to increase its technical capacity, know-how, human resources, and infrastructure to evaluate on a case-by-case basis the benefits or risks of GMOs.

Policy issues related with biotechnology and bio-security are dispersed in several policy documents (i.e., Science and Technology Policy; Strategy for Conservation and Sustainable Use of Biodiversity in Mozambique; Public Investment Program for the Development of the Agrarian Sector). To fulfill its international obligations, Mozambique's government approved its

Strategy and Action Plan for the Conservation and Sustainable Use of Biologic Diversity in Mozambique in July 2003.

The existing regulatory framework regulates the inspection of phytosanitary standards and vegetable quarantine (Diploma Ministerial nº 134/92 - *Regulamento sobre Inspeção Fitossanitária e Quarentena Vegetal*) and animal health (Decreto Lei nº 8/2004 - *Regulamento de Saúde Animal*). Seed production and trade, quality control, and certification are ruled by Diploma nº 184/2001. This specific regulation prohibits GMOs imports. All these regulations are implemented by the Ministry of Agriculture.

**Environmental regulation.** In an effort to define and clarify its regime of environmental licensing and regulation, Mozambique's government has approved Resolution nº 5/95, August 3<sup>rd</sup>, published its National Environment Policy, and adopted a broad range of general and sector-specific legislation and international treaties and conventions. Environment regulations cover a range of sectors and activities affecting business in general. Any activity that is expected to cause an environmental impact requires an environmental license. These licenses are subject to periodic review, and license-holders may be required to submit an annual environmental management report which considers the ongoing impacts of the activity and the efficacy of mitigation measures being used. Environmental licensing is subject to payment of inspection fees.

The Ministry for the Coordination of Environmental Action is the public entity empowered to rule and supervises environment laws. The general environment law (Lei nº 20 /97 October 1<sup>st</sup> and Decreto Lei nº 45/2004, September 29<sup>th</sup>) establishes procedures for impact evaluation. Investments and activities require impact evaluation studies. Special laws to protect the environment include: Decreto Lei nº 18/2004 June 2<sup>nd</sup>, while rules emissions; Decreto Lei nº 19/2007 August 9<sup>th</sup>, which rules the access and sharing of genetics and associated traditional knowledge; Decreto Lei nº 24/2008 July 1<sup>st</sup>, which regulates material that may have an impact on the ozone layer; and Decreto Lei nº 76/98 December 29<sup>th</sup>, which rules evaluation of environment impact. Mozambique's government has signed and ratified several African, regional and international agreements pertaining to the environment.

Although this diagnostic did not find widespread complaints among agricultural enterprises about compliance with environmental licensing requirements, it is clear that the lack of consistency and clarity in the regulatory regime, especially its implementation at the local level, exists at the expense of both the business environment *and* Mozambique's natural environment. Although environmental protection has attracted considerable government attention within the extractive industries, there simply is far less guidance and direction to be found in the agriculture sector. This is an area where inter-agency coordination should be strengthened: the Ministry of Agriculture should work with other key agencies to provide greater direction to stakeholders about environmental requirements with respect to water use and sanitation, agricultural waste, livestock management, pesticide use, etc.

**Economic Zones of Accelerated Development and Industrial Free Trade Areas.** Attracting and promoting private investment is the a major priority of the government of Mozambique. Decreto n.º 62/1999, September 21<sup>st</sup>, which was revised and approved by Decreto n.º 35/2000, October 17<sup>th</sup>, endorsed the legal framework for the establishment of Free Trade Areas. This law outlined all procedures to be followed for the development and management of these areas.

Special Economic Zones and Industrial Free Trade Areas were set aside in the country by Decreto Lei nº 76/2007, December 18<sup>th</sup>, resulting in a new Special Economic Development Zone in Nacala Port in northern Mozambique. Diploma nº 44/2002, October 7<sup>th</sup>, established special fiscal and customs conditions benefiting the Industrial Free Trade Areas. An Industrial

Free Trade Area (*Parque Industrial de Beluluane – Zona Franca*) was also created by the government through Resolução Interna nº 15/99, October 12<sup>th</sup>. Decreto Lei nº 44/2009, August 21<sup>st</sup> established a special government body to deal with private investment promotion, analyses and authorization composed of several ministers, the governor of the central bank, and the directors of CPI and GAZEDA. A special cabinet instituted by the government through Decreto Lei nº 75/2007, December 27<sup>th</sup>, is in charge of Economic Zones of Accelerated Development. Lei nº 4/2009, January 12<sup>th</sup>, approves the Code of Fiscal Benefits, while Decreto Lei nº 56/2009, October 7<sup>th</sup>, sets forth additional complementary rules. The fiscal benefits (import-free duty, exemptions, and reductions in income taxes) cover a broad range of economic activities from agriculture in the Economic Zones of Accelerated Development to industries in the Industrial Free Trade Areas.

**Public sector reform and decentralization.** An inter-ministerial commission has been established to accelerate public sector reform. In addition to the Prime Minister, several other ministers are members of this commission. Financially supported by both donors and public funding, several ministries outsourced studies to determine what changes should be made and the kind of staff and training that would be required. Among other reforms, there is a common refrain that the mandates and functions of various public sector agencies dedicated to private sector growth should be harmonized. Specifically, as recently recommended by the World Bank, the following five institutions should coordinate and streamline their functions, including their respective roles in the licensing of enterprises: the Center for Investment Promotion (CPI); the Institute for Export Promotion (IPEX); the Institute for the Promotion of SMEs (IPEME); the one-stop shops; the Private Sector Support unit under the Ministry of Industry and Commerce; and the provincial departments of that ministry.<sup>25</sup> For the purposes of the agriculture sector, another agency should be added to this list – namely, the Ministry of Agriculture, in particular the Agricultural Investments Promotion Center (CEPAGRI).

Mozambique is becoming increasingly decentralized and authority for decision-making and management of funds is being vested at provincial and district levels. However, the decentralization process is not being rolled out at the same speed throughout the country, and practices in certain provinces or districts often do not yet reflect existing changes in legislation.

The current government does not look as committed to decentralization as the pre-2010 administration – the process has slowed down or almost stopped. While few new public statements are urging the process of decentralization, the new government allocated to the districts a significant amount of Public Funding for Local Investment Initiatives (*Fundo Investimento de Iniciativa Local*) at a level that is not comparable to any of the previous governments. This funding was expected to increase private sector development by facilitating access to credit. Increasing criticism suggests this process is politically driven and lacks clear selection criteria. Independent evaluations do not recognize expected impact of this funding and are doubtful that most of those resources will be repaid pursuant to the lending scheme.

The decentralization and power-sharing process between central government, municipalities, and their local communities is moving at a slow pace. While the legal framework supporting decentralization is in place, the process has experienced significant delays. Lei nº 2/97, May 28<sup>th</sup>, established the basic framework that rules the municipalities while Diploma Ministerial nº 80/2004, May 14<sup>th</sup> rules over the need to consult with communities and Decreto Lei nº 51/2004,

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25. See World Bank, *Prospects for Growth Poles in Mozambique* (August 2010) at 34.



December 1<sup>st</sup>, approves the organization and funding to local technical and administrative services.

**Anti-corruption initiatives.** Corruption is perceived as a major problem affecting Mozambique's public sector and society. A specific anti-corruption law (Lei nº6/2004) was approved by Parliament and additional rules followed. Lei nº 16/99, July 10<sup>th</sup> requests the Administrative Tribunal to comment and report on Public Accounts. Lei nº 9/2002, February 12<sup>th</sup>, established the SISTAF (*Sistema de Administração Financeira do Estado*) State Administration and Financial System, while Decreto Lei nº 23/2007, August 9<sup>th</sup> rules the Management of Public Property (*Gestão do Património do Estado*), and Decreto Lei nº 54/2005, December 3<sup>th</sup> sets forth the rules and procedures for public tenders and procurement of goods and services by the public sectors (*Procurement do Estado*). Through Decreto Lei nº 46/2001, the government established IGEP, a body authorized to hold and manage public shares in private and public companies. Notwithstanding all of these initiatives, Mozambique compares unfavorably to several its neighbors, who have moved beyond statements of law and policy into implementation of standards and practices that prevent the enrichment of public servants at the expense of Mozambican society.

## 2.3 IMPLEMENTING INSTITUTIONS

Implementing responsibilities of existing laws and rules remain widespread over almost all ministries. With respect to agriculture and agribusiness, the Ministry of Agriculture and the Ministry of Industry and Commerce both have a significant responsibility in this matter.

Unfortunately, agriculture development and food production tend to be perceived as the sole responsibility of the Ministry of Agriculture, while employment of workers is perceived to be the exclusive responsibility of the Ministry of Labor. These erroneous perceptions widen the need for stronger coordination across all other government institutions, which may play a role in establishing a truly enabling environment.

Two generations after the country's independence, Mozambique is not yet able to produce the basic seeds for main food crops such as maize. While conflicts of interest might explain this failure, absence of a strong public commitment also plays a strong role. Ensuring access to resources, particularly land, and an enabling environment that can solve the basic and lasting problems with seeds, fertilizers and other relevant agriculture inputs, is primarily the responsibility of the Ministry of Agriculture.

It is also responsibility of the Ministry of Agriculture to establish an efficient, transparent, and strong natural resources management system. Both national and foreign investors see the lack of natural resource management as a major role in limiting the growth of agribusiness.

The Ministry of Industry and Commerce (MIC) is generally regarded among stakeholders as committed to the development of the private sector, including the agriculture sector, but insufficiently supported by other arms of government. Although MIC has adopted the

### KEY IMPLEMENTING INSTITUTIONS

- Ministry of Agriculture
- Ministry of Industry and Commerce
- Ministry of Planning and Development
- Ministry of Finances
- Ministry of the Environment
- Ministry of Justice
- Special Economic Zone

strengthening the country's business environment, including streamlining of licensing and permitting requirements, as a central priority, there is not yet a full commitment among other critical branches of government toward carrying out key reforms. The MIC is also perceived as lacking capacity in, or perhaps commitment to, various of its responsibilities. For example, it has not yet assumed the straightforward, low-cost mission of posting fees and administrative time-frames at all offices where the private sector interacts with government. Nor has it invested to a significant degree in straightforward, user-friendly regulatory guidance for SMEs. The MIC has an opportunity to lead when it comes to strengthening the transparency of government institutions, but this opportunity has not been fulfilled.

Despite these unfulfilled challenges, some steps have been taken to ease some of the registration difficulties. In order to simplify the registration process for small businesses, Mozambique has established the “Balcão Único,” – that is, a “one-stop shop” for new enterprises. This new approach to business registration addresses private sector complaints about the time it took to successfully open a business. The government's goal in creating this entity was to help reduce the number of visits to different entities required by those needing authorization to open a business.

Balcão Único was well received by the business community, and Mozambique significantly improved its ranking in the “Starting a Business” category of the most recent *Doing Business* report. In practice, however, these one-stop shops are regarded as purely “cosmetic” changes – no significant improvements have been noticed, and many people complain that now problems just seem to be concentrated in one single place.

The Balcão Único is not yet available and operational in all districts. More qualified staff and financial resources are required to improve the process of opening a business. Balcão Único also must serve as a channel to broadcast and inform about existing laws ruling business. While creating better processes and improving the capacity of people working in the Balcão Único would certainly help companies trying to get registrations, these single windows are not the only solution to private sector concerns.

Local and international investments need to follow other routes through specific bodies such as CPI (Investment Promotion Centre) and GAZEDA. CPI was established initially as a kind of “Balcão Único/one-stop shop” to facilitate foreign investors not familiarized with the local institutional and legal framework. This institution was also important in an institutional environment where the public sector and public servants were not clear about the way they should deal with foreign investors and its requests.

The Nacala Special Economic Zone (ZEEN) is the end of the transport corridor formed by the road that links the provincial capital (Nampula) to neighboring landlocked countries, in particular Malawi and Zambia. To date, businesses from Tanzania, South Africa, India, the United Kingdom, Italy, Portugal and Mozambique have invested more than US\$280 million in projects located in ZEEN, according to its director.<sup>26</sup> Of that amount, US\$144 million was reportedly invested in 2010 – US\$84 million by Mozambican investors and US\$60 million by foreign investors. In the first two years since the Special Economic Zone was established, 18 companies had been licensed and certified by the Office for Economic Zones of Accelerated Development (GAZEDA). Some of these companies were already operating. Eleven of the

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26. See ClubofMozambique.com, Nacala Special Economic Zone, Mozambique, receives \$280 million in investments (March 3, 2011).

licensed and certified companies were from the industrial sector, two from the tourism sector, three from the services sector and two from the agri-industrial sector. Within the zone, a new agricultural project spearheaded by a joint Italian-Mozambican investment has been approved to grow the biofuel agent jatropha and will employ up to 500 workers.<sup>27</sup>

## 2.4 SUPPORTING INSTITUTIONS

**Public institutions.** The main institutions required to improve, simplify, and implement the present legal system covering business activities in Mozambique are already in place. The Agricultural Investments Promotion Center (CEPAGRI) is a quasi-independent division of the Ministry of Agriculture, which is charged with promoting investments in the agriculture sector. Its management has a strong understanding of the opportunities within Mozambique, but its work is generally centralized with few of its promotion activities reaching the rural regions and its resources lacking. Unidade Técnica da Reforma Legal (UTREL) is an executive inter-ministerial committee created by Decreto nº. 22/2002, August 27th, to analyze and propose necessary legal improvements and reforms. Additionally the Centro de Formação Jurídica e Judiciária or Center for Legal and Judiciary Training (CFJJ) is a public training institution created by Decreto Lei nº 34/1997, October 31st, with the capacity to train all required staff necessary to implement existing laws. Improvements in the legal and judiciary system are costly and donors have provided a significant amount of resources to improve the existing situation.

**Confederation of Mozambican Business Associations (CTA)** was created in 1996 as a platform for dialogue between the government and private sector to achieve a favorable business environment in Mozambique. It is the umbrella organization for all business associations in Mozambique and currently is comprised of 68 associations, chambers of commerce, and federations. CTA's main purpose is to work on behalf of the private sector to influence economic policy and increase business competitiveness. Its headquarters office is in Maputo, with regional offices in Nampula, Beira, and Maputo. CTA also has representation at the provincial level as well. The decentralized regional offices interact with private sector representatives in their respective locations.

CTA has three main areas of activity:

*Consultation.* CTA specialists investigate and analyze policy and regulatory issues that adversely affect the business environment. This work consists of identifying and investigating problems, making discussion notes, preparing position papers, and negotiating with government to develop solutions through policy reform, policy implementation, and new legislation.

*Institutional Relations.* CTA provides support services to its members by providing timely information on topics addressed on behalf of the private sector; advice and guidance to its members on policy and issues affecting business, and open, transparent communications with its members and other stakeholders.

*Analysis.* The CTA conducts independent studies, analyses, and investigations based on its members' priorities and interests, which allows them to define and defend their positions with regard to government policies impacting the business environment.

Since its beginning, CTA's role has expanded to meet the changing demands of the private sector, the government, and the international community. As the primary liaison between the

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27. AllAfrica.com, Major Biofuel Project Underway in Nacala-a-Vehla (March 29, 2011).

private sector and government, demands on CTA have grown substantially in recent years. CTA's internal institutional organizational structure and staffing plan have not kept pace with its expanded workload, and its management team is understaffed.

Since 2005, CTA has supported policy change to help improve Mozambique's *Doing Business* ranking. In this regard, it helped guide considerable improvement in the time required to start a business and in the level of protection for investors; it helped establish the Simplified Licensing Regime, which eliminated over 100 onerous licensing requirements; and it helped bring about changes to Mozambique's onerous labor law. Despite these improvements, the overall improvement in *Doing Business* has been slow. Mozambique was ranked 110 (of 145) in 2005 and 135 (of 183) in 2010.

For several years, USAID has provided most of the funding for CTA's operational budget, while the government of Switzerland has provided a substantial amount of funding for additional technical areas. While this funding has achieved positive results, it has also led to perceptions that CTA is a top-down, donor-driven organization that does not respond directly to its members' interests. Furthermore, there is a lack of implementation of approved policies at the national level, and a perception that Mozambique is more interested in quick fixes to achieve a higher *Doing Business* rating than it is in true reform. While the local private sector perceives the need for law simplification and a friendlier legal environment, it does not invest the necessary resources to promote that change nor does it show strong commitment through its business associations. CTA is the main private sector organization in Mozambique with 68 member organizations. However, CTA is relatively weak in its impact and services compared with ACIS, a private business organization based in the city of Beira. Several publications both in English and Portuguese languages are available on the ACIS website. Those publications extensively explain how most laws apply to local businesses, and to a certain level details procedures and cautions to be adopted by those investors not fully familiarized with the local legal environment.

#### KEY SUPPORTING INSTITUTIONS

- Agricultural Investments Promotion Center
- Unidade Técnica da Reforma Legal
- Centro de Formação Jurídica e Judiciária
- Confederation of Mozambican Business Associations
- Association for Commerce and Industry in Sofala
- Investment Promotion Center

The Investment Promotion Centre (CPI) is still the major entrance to all local and foreign investments. It facilitates internal negotiations and connections with involved public entities and provides investors with all fiscal benefits available. Information generated by investment projects is also concentrated here and made available to the public. But CPI plays no role in facilitating the access to natural resources (land, forests, water) required by investors. All private investments received by CPI are submitted to a national government body composed of the prime minister and several other ministers that analyze and authorize them. National and foreign investors are treated equally and both have the same fiscal benefits.

## 2.5 SOCIAL DYNAMICS

**Moving beyond the legal framework toward meaningful implementation of reform.** Public opinion and donor pressure and support are pushing Mozambique's government to improve the country's business environment. The government approved a resolution (Resolução 3/2008, May 29<sup>th</sup> – *Estratégia para o Melhoramento do Ambiente de Negócios*) clarifying its Strategy for Improving Business Environment. It appears that the government is committed to this initiative.

Faced with oil and food price increases, Mozambique's economic difficulties and social unrest are increasing.

Existing laws, even if they are not fully available and known, are not the reason why the business climate has not dramatically improved. A better understanding and knowledge of all existing laws and legal environment could help the private sector to perform better. But the problem remains with those in the public sector with power to implement and enforce those laws. In a country with a high level of illiteracy, poor infrastructure and unqualified people, it is always difficult for the private sector to fully abide by all existing laws and all requirements involving their businesses. Nor do they have, most of the time, qualified service suppliers who could fulfill the requirements for them.

New laws and procedures adopted by Mozambique's government are also helping to speed up the opening of a business and its registration. The number of places to visit and required steps has been significantly reduced. Tax-payment procedures have been made easier. Yet agriculture in Mozambique remains primarily an informal activity, and legal improvements are not the main concern of actors in the informal sector. Rather, most private sector complaints are related to the attitudes and behavior of public servants (typically the demand for pay-offs) who are not performing according to their legal duties.

The required legal framework to access natural resources is in place and can be made to work efficiently when political will is present in the system. A better performance of the legal and judiciary system also requires more human and financial resources and less political motivations.

While the legal framework for getting licenses does not look complex, improvements are still needed in the way public servants share information among themselves. Information sharing among public servants must be increased to reduce the time it takes to process paper work.

By 1976, all taxes and public servant salaries were already processed by computers. Some companies and banks were already using the most up-to-date technology at the time. Since the International Conference on Electronic Government for Development, Palermo (Italy), in 2000, Mozambique has adopted its Policy on Informatics and in 2005, it approved the Government Strategy for the Electronic Government. Despite this strategy, the level of confidence between citizens and public servants is not yet conducive to a generalized use of information systems through e-Government. Despite this lack of trust, a better use of existing capacities for information sharing among different government institutions could help to provide timely and less expensive services to the private sector.

**Gender and licensing.** Women make up half of Mozambique's workforce and play a significant role in the country's formal and informal sectors. While the agriculture sector employs many women, they work primarily in the informal trade and subsistence aspects of farming. Women can possess their own land and property. Mozambique, through Resolution 4/93, Jun 2nd, ratified the international convention against all forms of discrimination against women.

Mozambique's constitution clearly establishes gender equality in all areas of society and prohibits discrimination in the legislative, political, economic and social development context. The Family Law (Lei nº 10/2004, August 25th) was approved and it established gender equality before the law, on issues of marriage, divorce, custody of children and the division of matrimonial property. The law also allows for women to lease and hold land under conditions that are entirely equal to men. Despite the availability of a Family Law to protect women's rights, women's rights are rarely respected in rural areas. As with many aspects of Mozambique's

enabling environment, the application of the law still remains a problem, as does the dissemination of different aspects of the law to women in rural areas.

In 2009, Mozambique received the African Prize for the Promotion of Gender (African Gender Award) in recognition of the country's efforts to empower Mozambican women. The list of accomplishments includes the adoption of the Family Law and Law on Violence against Women. More than 30% of Mozambique's Parliament consists of women, and women are also well represented in the executive branch, the provincial governments, and the judiciary.

## **2.6 RECOMMENDATIONS**

### **INTRODUCE AN E-GOVERNMENT PLATFORM AND EXPLORE OPPORTUNITIES IN THE USE OF NEW MEDIA FOR PUBLIC OUTREACH TO AGRICULTURE STAKEHOLDERS**

Although many of the government agencies have an Internet presence, online information and services are uneven and poorly maintained. Mozambique should examine the experiences of countries that have developed an e-government platform, either for agribusiness, specifically, or for doing business in Mozambique, generally. Such a platform can provide overall licensing information, including steps, fees, and timeframes; copies of necessary forms; and even an opportunity for public-private dialogue on key topics. An enormously effective example of such a program has been implemented by Rwanda, through "E-Regulations Rwanda," available at <http://rwanda.e-regulations.org/show-list.asp?l=en&mid=67>. Any assistance directed at such a program should integrate lessons learned from past USAID e-government initiatives, such as the recent experience in Macedonia.

At the least, the website for CEPAGRI, the agency charged with encouraging and guiding investment into Mozambique's agriculture sector, should be strengthened. This should not take place through donor "doing", but rather donor "showing" how a web presence need not be overly burdensome and expensive to maintain.

In addition, there are also opportunities to use new media in the promulgation of information to constituencies with increasing access to the Internet. Illustrative examples of opportunities to use electronic tools to enhance public-private dialogue include the following:

- Encouragement and demonstration of *new media opportunities* (e.g., blogs, list serves, and wiki tools) to apprise various stakeholders of issues of mutual interest.
- Development of *private-sector-led training in the use of new media* to private and public actors, covering such issues as electronic marketing, business use of social media, and Internet-based sales opportunities.
- Assisting business schools and other training institutions in the *development of new media curricula*, covering such issues as new media marketing, intellectual property, and privacy.

## **SUPPORT THE DECENTRALIZATION PROCESS, INCLUDING THROUGH REFORM OF THE FUNDO INVESTIMENTO DE INICIATIVA LOCAL**

As noted, there is little evident commitment these days to the strengthening of provincial, district and municipal governments for the purpose of decentralizing government services. The *Fundo Investimento de Iniciativa Local* initiative is an example of a decentralization program that is going poorly: local governments reportedly interpret their management role over the funds less as an opportunity to build strong lending practices and new enterprises in their districts, and more as a pathway for rewarding already empowered individuals and even securing kickbacks. This program warrants immediate and transparent review by the government, followed by an NGO or media-led mechanism for reporting on how the money is spent and by whom. In the past, USAID has supported a variety of anti-corruption campaigns, such as in Bulgaria, where it supported a checklist of transparency best practices across all municipal functions, a public awareness campaign, pilot projects of new transparency practices, and an annual award program.

## **CREATE A SIMPLIFIED AND UNIFORM LICENSING PROCESS FOR SMES**

All costs involved in the business licensing process are established under Diploma Ministerial n°. 150/2001 October 3<sup>th</sup> and Diploma Ministerial n° 19/98. These regulations require revision because they might negatively impact small business. Above all, fees should be calculated based on the kind of services that are provided and not based on the amount of capital shareholders. Services should be paid by all under single cost criteria.

## **DEVELOP SHORT, SIMPLE, SECTOR-SPECIFIC GUIDANCE FOR NEW ENTRANTS INTO THE AGRICULTURE SECTOR**

Newly established enterprises or those that are seeking to enter the formal sector need straightforward (but detailed) guidance concerning their obligations. If the implementing agencies themselves are unwilling or unable to provide such direction – including specific information such as the amount of fees and timeframes – private sector associations, such as CTA or its member associations, are in a strong position to do so. Such an effort may most effectively take place on a local basis, where sector representatives can develop short guides to regulation within their city, municipalities, or towns. Such guidance necessarily involves perusal and delineation of local by-laws and regulations, which may vary according to jurisdiction. Consultation with government authorities is desirable, but if cooperation is not forthcoming, the private sector can nonetheless provide guidance for its own constituents.



A successful example of such an initiative comes from the business community in Jamaica. The legal framework overlaying Jamaica's construction licensing regime is vast – at least 35 laws and hundreds of regulations pertain directly or indirectly to land use in Jamaica. In 2006, the Jamaican Chamber of Commerce (JCC), supported by USAID, created a comprehensive Development and Investment Manual. The manual was created for the purpose of clarifying and improving access to the statutory and regulatory framework implicated by the real estate development process. The process of collecting all pertinent laws and regulations proved long and challenging: “[During the process] we discovered just how much was in peoples’ heads” rather than in the law, according to one public official.<sup>28</sup>

Following this undertaking, several volumes of the manual (with others planned for the future) were issued in mid-2007, covering the following topics:

- Planning and development
- Environment
- Infrastructure, utilities, and communications
- Hospitality industry and security
- Social infrastructure and waste disposal
- Business facilitation
- Finance

As the JCC noted in its introduction to the manual, the collection of all relevant laws and regulations was merely a first step for reform of Jamaica's licensing process. The JCC planned for a critical second stage: “a thorough review of the processes ... to ensure that all redundancies and duplications, as well as outdated or irrelevant procedures are excised, and that business-friendly procedures are put in their stead.” The lessons from this undertaking would be enormously useful to Mozambique. Though stakeholders are aware of improvements in the legal regime, including that for licensing, there is insufficient knowledge at the enterprise level about the specific requirements they must follow.

## **INCREASE TRAINING OF GOVERNMENT OFFICIALS ACROSS PROVINCES TO ENSURE THAT THE IMPLEMENTATION OF THE LAW IS UNIFORM ACROSS THE COUNTRY**

While infrastructure and personnel are not available in all areas, the ways the same law is perceived and implemented might differ among the various provinces. A unified system of training should be put into place and government officials should be trained. Donor-supported training programs should make use of the high-level local and foreign expertise currently situated in country. Training should entail action-based case studies focusing on local industries offering enterprise growth and job-creation potential. There should be standardization of documents and training materials, while allowing for discussion of local priorities and opportunities.

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28. See *USAID/BizCLIR Jamaica Diagnostic (December 2007)*, available at [www.bizclir.com](http://www.bizclir.com).



## **DEVELOP CUSTOMER SERVICE PROGRAMS FOR GOVERNMENT AGENCIES**

Complaints from the private sector concerning their treatment at the hands of government authorities do not just concern bribes and other methods of corruption. Rather, they concern the widespread behavior of officials who do not view themselves as public servants. Reports of stubbornness, slowness, “the runaround,” and all kinds of other unhelpful behavior on the part of government representatives were presented throughout this diagnostic.

Agencies that desire to rise above the poor reputation of government generally can begin by adopting private sector practices of customer service. If they do not do so already, agencies should post their vision statements or missions for public review. This effort toward accountability should be extended to the posting of fees and processing timeframes – all as part of a broader push to improve how the government views its relationships with its customers. Training in customer service is readily available from local private sector providers, online sources, and other resources. Government actors should not only access this training, but seek customer feedback and reward workers for superior performance.

## **CONDUCT A CAMPAIGN TO SHINE LIGHT ON THE PUBLIC MANAGEMENT OF NATURAL RESOURCES**

The MCC is midway through its land reform initiative in the north, which aspires to bring a great deal of order and change to the country’s management of its natural resources. To date, however, little information is publicly available about what changes have been instituted and how the public will be affected by these changes. Even less information is accessible about land reforms and transactions in other parts of the country. Independent review of all aspects of agricultural land management is warranted, including through analysis and publication of results. This can take place through a combined effort of one or more NGOs, academic institutions (including law schools and agriculture economics faculties), and the media.

## **CONDUCT A REVIEW OF THE LAW DECREE N. 42.65499 TO IDENTIFY WHERE PROCEDURES CAN BE STRENGTHENED**

Mozambique’s food security laws (Lei nº 8/82, June 23rd and Decreto lei nº 15/2006, June 22nd ) rule over the necessary conditions to be fulfilled in relation to production, transport, trade, and inspection of food products for human consumption. The Consumer Defense Law (Lei nº 22/2009, September 28th) introduced specific rules to protect consumers and is applicable to individuals, private and public companies, public administration, municipalities as far as they receive any third parties payment to produce, import, construct, distribute or trade all kinds of goods and services. The development of a stronger agro-business based on new technologies might require additional legislation. There is new draft legislation prepared by the Ministry of Agriculture on Bio-Technology that should be discussed, improved, and approved.

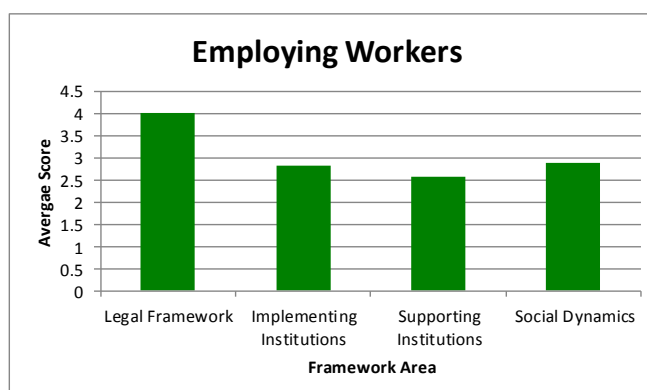
## **MONITOR THE EXPERIENCE OF ALL COMPANIES DOING BUSINESS IN THE NACALA SPECIAL ECONOMIC ZONE, IDENTIFYING OPPORTUNITIES TO STRENGTHEN THIS OPTION FOR AGRICULTURAL ENTERPRISES**

In theory, Special Economic Zones are supposed to offer fluidity of regulatory procedures, easy access to cross-border trade, and easy provision of such resources as water and electricity. The experiment with such a zone in Mozambique is new and limited, but it is worth monitoring for strengths, weaknesses, and opportunities to promote investment in the country.

# 3. EMPLOYING WORKERS

## 3.1 INTRODUCTION

The term “employing workers” suggests the *formal* employment of workers – that is, the engagement of individuals to work, at a minimum, according to terms and conditions set forth by a country’s body of labor and employment laws. These laws typically concern issues of wages, work hours, occupational safety and health, equal opportunity, social security, the right to organize, and collective bargaining. In Mozambique, only around 8% of the country’s labor force of nearly 10 million people is formally employed.<sup>29</sup> In the agricultural sector, which engages as much as 80% of the working population, the rate of formal employment is far less. Most workers toil informally as “peasant farmers” on small plots held by their families or villages or as casual traders, striving to transport and sell their goods among communities that have few means to sustain them.



Two issues dominate consideration of the business environment and agriculture workers in Mozambique. First, Mozambique’s agricultural workers – including smallholder farmers, casually employed farmhands, and even most formally employed workers on sugar, cotton, and tobacco plantations – are overwhelmingly unprepared to meet the demands of a modern, productive agriculture sector. Even by regional standards, their productivity on the farm and in processing plants is low, and there is a sense across agricultural subsectors – from staple crops to exports – that “we cannot compete” with the neighbors, including South Africa and Malawi. Self-employed farmers feel underserved by the country’s public agricultural extension services – a force that is new since independence (those crops with private extension support, including cotton and tobacco, are considerably better served). Worker unpreparedness derives from weaknesses in the country’s education sector, particularly in the rural areas (although advances in female youth literacy, from under 40% in 2004 to around 63% in 2009, are enormously promising). Employers attribute poor work habits in wage-earning jobs to the scarcity of such jobs, meaning that most laborers have not worked under formal conditions before.

At all levels, resources for worker development are insufficient and advances in knowledge are rarely accessed or taught. The many institutions that could work together to build the capacity of Mozambique’s citizenry – ministries, universities, secondary schools, NGOs, private companies, and others – are missing untold opportunities in information-sharing and skill-building. The low skills of employees feed into the overwhelming informality of the sector; agricultural workers have little power to demand better terms from the people they serve. These issues are hardly

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29. Economist Intelligence Unit, “Mozambique Risk: Labour Market Risk” (October 7, 2010).

new,<sup>30</sup> but finding meaningful ways to address them has proven elusive, for both local institutions and donors.

Second, although efforts were made during the revision of the country's Labor Law in 2007 to diminish the severity of the restrictions pertaining to the conditions of work – thus encouraging employers to take on more formal workers – most employers continue to believe that the law's "crippling redundancy requirements"<sup>31</sup> and other constraints discourage them from employing more workers. The law makes employment of skilled foreign labor especially cumbersome and expensive and enables government bureaucrats to substitute their judgment of who a company should hire for the company's own views. As a result, companies must significantly restrict the extent to which they benefit from the contributions of foreign workers, ultimately missing opportunities to build

local skills and explore new opportunities in agriculture production. This fact contrasts with recent best practices in similar low-skill environments, such as Rwanda, where foreign workers are not regarded as competition, but as resources for knowledge, skills, and development.

<b>TABLE 1: MOZAMBIQUE'S WORKFORCE PROFILE</b>	
<b>Population</b>	23 million
<b>Labor force</b>	9.8 million
<b>Percentage of workforce employed in agricultural sector</b>	28.8
<b>Percentage of workforce employed in industrial sector</b>	26
<b>Percentage of workforce employed in services</b>	45.2
<b>Unemployment rate</b>	21% (1997)
<b>Literacy (Male)</b>	63.5% (2003)
<b>Literacy (Female)</b>	32.7% (2003)
<b>Literacy (youth female -- ages 15-24)</b>	63% (2009)
<b>Percentage of children aged 7-14 engaged in economic activity<sup>32</sup></b>	32%
<b>Adults living with HIV/AIDS</b>	11.5%

A variety of reforms would help Mozambique realize the limitations of its current policies and transform its enabling environment for agriculture into one where the law more effectively supports the emergence of wage labor in the agriculture sector and where workers have more and better opportunities for skill-building, on-the-job training, and linkages with the demands of employers. These include the following:

- Promote partnerships among key community players, including primary and secondary schools, vocational institutions and training centers, public and private extension services, universities, regional employers, and economic development organizations. Approaches to these partnerships would include internships, adjunct teaching relationships between businesses and universities, private sector-sponsored laboratories or equipment in classrooms, and other experiments in leveraging resources to develop capacity.
- Prior to making additional investments in

30 See, e.g., USAID/DAI, Mozambique/Human Capacity Building Assessment – Agriculture Sector (December 2003).

31 Id.

32 UNICEF considers a child to be involved in child labor activities under the following classification: (a) children 5 to 11 years of age who during the week preceding the survey did at least one hour of economic activity or at least 28 hours of domestic work, and (b) children 12 to 14 years of age who during the week preceding the survey did at least 14 hours of economic activity or at least 42 hours of economic activity and domestic work combined.

government extension services and development of farmers' organizations, invest in greater understanding of which methods have proven successful in these areas (while others have proven less successful) and why. Then, make and adhere to a plan for integrating a mix of public, private and NGO-supported extension services into all donor and NGO projects, including farmers' organization development, so that extension capacity can grow and benefits to farmers can increase.

- Revisit aspects of the law that unnecessarily raise the costs and burdens of formal employment, thus encouraging employers to take on new employees. In particular, Mozambique should reduce the cost of laying off workers for economic reasons, which is now close to the highest in the world, at 134 weeks of salary for formal workers.<sup>33</sup>
- Review and reform of the country's political and legal unfriendliness toward the use of foreign workers as a source of knowledge and skill-building, including implementation of simple mechanisms that can get necessary skilled labor into the country with minimal government interference.
- Strengthen resources dedicated to the health and education of women, who are surprisingly and disproportionately underserved in these areas.

One point repeatedly made during this diagnostic was that, in Mozambique, skilled workers in all major sectors – industry, service, and agriculture – tend to have their choice of job opportunities upon graduation. In turn, these workers are in a far greater position to exercise their rights to a fair wage and safe working conditions. Thus, the priority for the country ought to be that of building skills, and, by extension, worker productivity. Formal protections of core labor rights for larger groups of people will follow.

The AgCLIR scoring system gives a relatively healthy score for the Legal Framework – with the treatment of immigrants and the exorbitant redundancy costs accounting for most reported problems in that area – with Supporting Institutions accounting for the weakest of the cumulative scores.

#### KEY LAWS

- Constitution (1990) (amended in 1996, 1998, and 2004)
- Labor Law (2007)
- Ministerial Diploma 123/2006 on Minimum Wage Levels
- Decree nr. 50/2009 (creating the Labor Mediation and Arbitration Commission)
- International conventions
- International private sector standards – i.e., GlobalGap and Fair Trade

## 3.2 LEGAL FRAMEWORK

As summarized in Mozambique's Labor Law, the sources of authority over labor in the country are the constitution, "normative instruments adopted by the Assembly of the Republic and the Government" [laws and regulations], international treaties and conventions, and collective bargaining agreements (Labor Law, Art. 13(1)). In addition, in a broad and difficult-to-enforce provision, the Labor Law declares the "practices of each occupation, sector of activity or enterprise that are not contrary to the law or the principle of good faith" as a source of labor law, unless a collective bargaining agreement states otherwise (Art. 13(2)).

33. World Bank, Doing Business 2010 (2009) at 26.

**Constitution.** With respect to labor and work, Mozambique’s 1990 constitution is generally an aspirational document. It states its philosophical or theoretical ideal and was not enforced as the law of the land – as evidenced by the following provisions:

- A commitment to the family as a core unit, and a goal to encourage “peasants as well as individual laborers to organize themselves into more advanced forms of production” (Art. 41).
- A view of labor as the “driving force of development” along with a commitment to “the just distribution of the proceeds of labor” (Art. 51).
- A statement that work is a “right and duty of all citizens, regardless of sex” and that all citizens should be allowed to choose their profession (Art. 88(1) and (2)).
- The right against forced labor (Art. 88(3)).
- The right “to just payment, to rest, and to holidays,” to safe work conditions, and to dismissal only “in accordance with the law” (Art. 89).
- The right to form labor unions and, unless limited by law, to strike (Art. 90 and 91).
- General support for the rights of women (Art. 57).

In general terms, Mozambique’s constitution prohibits child labor (Art.121). More detailed provisions pertaining to children in the workforce are found at Article 23 of the Labor Law and in the international conventions ratified by the country.

**Labor Law.** Mozambique enacted a new Labor Law on August 1, 2007. The law entered into force in January 2008, replacing a prior code from the 1990s that was heavily influenced by the country’s post-independence, socialist priorities, and international relationships and widely regarded as an impediment to private-sector growth. The new law is regarded by its drafters as a compromise between highly pro-labor instincts and a more business-friendly approach to employing workers. At the time, it was cited by *Doing Business* as an important initiative toward greater flexibility in the marketplace for labor, specifically for increasing the flexibility of fixed-term contracts, reducing the notice period for dismissals and diminishing the burden for severance pay.<sup>34</sup> The law aspired to remove rigidities of hiring and firing of workers and to make certain conditions of work less strict. Businesses interviewed for this diagnostic, however, specifically complained about the following aspects, which they claim discourage the formal employment of workers:

TABLE 2: GENERAL LIMITS ON FOREIGN WORKERS IN MOZAMBIQUE	
Number of employees working for company	Percentage of work-force that may be foreign
Up to 10 employees	10%
10-100 employees	8%
More than 100 employees	5%

- *An extremely liberal and difficult to track system for “justified absences.”* (Art. 103). The law provides for five days of permissible absence for marriage or the death of nine types of close relatives; two days permissible absence for the death of 11 types of other relatives; time off for illness and accident that makes it impossible to work; accompaniment of children to the hospital; and a few other areas. As one employer said, “If workers knew the law, they would stay home [legally] three months out of the year.”

34. World Bank, *Doing Business* 2009 (September 10, 2008) at 21.



- *An unusually long period of paid annual holidays* – “thirty days for every year of actual service, from the third year onwards.”<sup>35</sup> (Art. 99).
- *A sharply limited number of foreign workers for all types of employment, whether skilled or unskilled.* (Art. 31). A company with 100 workers, for example, is not entitled to employ more than five foreign workers without special permission from the government. “Investment projects” – those established through the Center for Investment Promotion – may be permitted more foreign workers, but their request for more foreign workers must be established from the outset of the project, or by a cumbersome amendment process, which growing companies do not perceive as business-friendly. Fines for failure to observe these limitations are reportedly high. As summarized by the Economist Intelligence Unit:

*Obtaining work permits for expatriates is a slow and cumbersome process which currently requires the approval of the Ministry of Industry on a case-by-case basis, and which takes three to six months to complete. This has encouraged some companies and aid agencies to get round restrictions by employing workers on 30-day tourist visas (which can be renewed on day-trips to South Africa), but this practice is illegal.*<sup>36</sup>

- *A cumbersome process and excessive cost of laying off workers, or even firing them for cause,* which includes notification not only of the applicable labor union, if any, but also of the Ministry of Labor. (Art. 131). As a practical matter, terminating the employment relationship, even when an employee has committed flagrant violations of the company’s rules, is “very difficult and quite expensive,” in the words of one employer.

The nature of wage employment in the agriculture sector is often seasonal. Although the Labor Law does not address seasonal work in detail, it contemplates the reality of agricultural business needs by listing it among the conditions for which employers may issue fixed-term contracts. (Art. 40(2)(b)). According to the Ministry of Labor, a regulation directly pertaining to the special issues of agricultural workers is currently under development with assistance from the ILO. A new regulation would likely contain provisions addressing seasonal work, as well as special issues pertaining to rural workers and social security. Currently, private sector employers are generally satisfied with their ability to engage seasonal labor on short-term contracts, without shouldering extraneous or costly burdens during “off” months. These stakeholders should contribute to the discussion of any new rules that would create more obligations toward seasonal workers on the part of employers.

Until late 2010, most labor disputes went through the courts or a dispute resolution body within the Ministry of Labor. Recently, as contemplated by the new Labor Law (Art. 184), a new mediation body has been created to manage employer-employee disputes. As a practical matter, these changes do not make much difference for agricultural workers, who reportedly are the vast minority among those who have availed themselves of the formal mediation process.

The Labor Law addresses occupational safety and health in provisions pertaining to Hygiene and Safety at Work, Health of Employees, and Work Accidents and Occupational Illnesses (Arts. 216-236), including through policies pertaining to remuneration for work accidents. Relative to other countries in the region, there appears to be more of a culture of work safety in Mozambique. For example, construction workers more commonly wear protective equipment,

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35. It is not clear if this reads correctly. A literal interpretation of this provision would award an employee who has worked for 10 years a total of 300 days of paid annual leave.

36. Economist Intelligence Unit, “Mozambique Risk: Labour Market Risk” (October 7, 2010).

and safety concerns about skin protection in the cashew industry are addressed significantly. Yet the weakness of the Ministry of Labor's inspection service means that agriculture workers do not have confidence that their health and safety will be treated as a priority by their employers and the government. One union representative asserted during this diagnostic that agricultural workers are particularly vulnerable to poor health and safety practices. On the other hand, business representatives noted during this diagnostic that there is little clarity about exact health and safety requirements in the formal agriculture sector, with fines being issued in areas for which regulations do not exist, such as required dress for workers.

**Minimum wage.** Each year, pursuant to *Ministerial Diploma 123/2006 on Minimum Wage Levels*, Mozambique's Labor Consultative Commission, which consists of representatives from the government, trade unions, and employer associations, sets minimum wages for various sectors. The commission designates different wages for different sectors. If the commission fails to reach an agreement on wage levels, the Ministry of Labor may then set the wages for the year.

<b>TABLE 3: MINIMUM WAGES IN THE AGRICULTURE SECTOR (METICAL/MONTH)</b>		
<b>Year</b>	<b>Agricultural workers general</b>	<b>Workers in the sugar industry</b>
Minimum wage, 2010	1681.41	1712.00
Minimum wage, 2009	1486.00	1612.00
Minimum wage, 2008	1315.00	1315.00
<i>Illustrative additional sectors (2010):</i> <i>Finance sector workers: 3500 M/month</i> <i>Electricity and gas sector workers: 2662 M/month</i>  <b>Source:</b> Wage table provided by union representative		

General agricultural work receives the lowest minimum wage among all job categories. Wages in the sugar industry, a more mechanized work setting than most other agricultural sub-sectors, are only slightly higher.

One relatively large formal employer stated during this diagnostic that the minimum wage for agricultural workers is, in fact, "too low." Another stated that even though he pays more than the minimum agricultural wage, farmers also complain that it is "too low." Both employers asserted that pilferage and poor employee work habits stem from wages that are perceived as insufficient to provide even minimal support for an individual's needs.

#### **International conventions and international labor standards.**

Since independence, Mozambique has been a signatory to many of the major international conventions on labor, as promulgated by the International Labor Organization.<sup>37</sup> These conventions pertain to a range of issues, including collective bargaining rights, the abolition of forced labor, minimum ages for work, and others. Most recently, Mozambique ratified the Forced Labor Convention, the Minimum Age Convention, and the Worst Forms of Child Labor Convention in 2003.<sup>38</sup>

37. A list of the conventions ratified by Mozambique is set forth within the ILO's website, at <http://www.ilo.org/ilolex/cgi-lex/ratific.pl?Mozambique>.

38. The 1999 United Nations Convention defines the Worst Forms of Child Labor as the following:

- all forms of slavery or practices similar to slavery, such as:
  - the sale of a child;
  - trafficking of children, meaning the recruitment of children to do work far away from home and from the care of their families, in circumstances within which they are exploited;
  - debt bondage or any other form of bonded labour or serfdom;

Child labor remains a pervasive issue in Mozambique, particularly in rural areas.<sup>39</sup> A 2004-2005 survey conducted by Mozambique's National Institute of Statistics recorded 32% of children between 7 and 17 years old as engaged in some form of economic activity, with rural areas showing 40% participation as opposed to 16% in urban areas. According to UNICEF (and as evident through casual observation in the countryside):

- The work children perform in agriculture is often invisible and unacknowledged because they assist their parents or relatives on the family farm. Children are often classified as 'helpers' even though they perform similar and, at times, more strenuous work than adults.
- Given their extreme poverty and the shortage of schools and professional training centers, particularly in rural areas, many Mozambican parents and guardians put their children to work from an early age in order to complement the household income or for subsistence.
- At age seven, around 6% of children in the country are already engaged in productive activity. Overall, boys and girls are involved in equal measures, with the exception of domestic work, where girls make up a larger proportion of the affected children.
- Children laborers in agriculture face a number of risks and dangers including long hours and hazardous working conditions, which in Mozambique are more prominent in cotton and tobacco industry. They also face extreme temperatures, risk of injury from heavy machinery, toxic pesticides, livestock and wild animals.<sup>40</sup>

Attracting international buyers for agricultural products leads to some increased compliance with international labor standards, including norms opposing child labor. For example, companies that export fresh produce from Mozambique to EU countries are required to have GlobalGAP certification, which imposes some "socially responsible" codes of conduct to protect the rights as well as health and safety of their workers. In addition, an increasing number of agricultural exporters also seek Fair Trade certification, according to which farmers are not only protected in terms of their rights and well-being, but ensured a minimum guaranteed price for their produce. Although Fair Trade-compliant goods offer prices that are 10-15% higher than those that have not been certified, farmers' organizations find such certification difficult to manage, due to high expectations for record-keeping. Literacy issues and requirements for maintenance of receipts present capacity challenges for many farmers seeking Fair Trade certification.

### 3.3 IMPLEMENTING INSTITUTIONS

KEY IMPLEMENTING INSTITUTIONS	
<ul style="list-style-type: none"> <li>• Ministry of Labor</li> <li>• Commission for Mediation and Arbitration of Labor</li> </ul>	<p>Ministry of Labor. Like several of the African countries that have been reviewed by an AgCLIR diagnostic in the recent past,<sup>41</sup> Mozambique's primary labor authority lacks</p> <hr/> <p>or compulsory recruitment of children for use in armed conflict;</p> <ul style="list-style-type: none"> <li>• Commercial sexual exploitation of children, including the use, procuring, or offering of a child for prostitution or the production of pornography</li> <li>• Use, procuring or offering of a child by others for illegal activities, including trafficking or production of drugs.</li> </ul> <p>39. Around 2007, Mozambique enacted a Children's Rights act, which also addresses the issue of child labor.</p> <p>40. UNICEF: Mozambique: Creating a Protective Environment against Child Labour, available at <a href="http://www.unicef.org/mozambique/protection_3613.html">http://www.unicef.org/mozambique/protection_3613.html</a>.</p> <p>41. These include Ghana (2008), Senegal (2009), Uganda (2010), Tanzania (2010) and Congo (2010). See <a href="http://www.bizclir.com">www.bizclir.com</a>.</p>



significant influence over the daily affairs of most workers. According to the various stakeholders interviewed for this diagnostic, there are many reasons for this state of affairs, including a general lack of resources within the central agency; a huge informal sector that receives far less administrative attention than Mozambique's formal workplaces; a paucity of resources especially with respect to the inspection function in the rural areas; occasionally opportunistic enforcement practices (i.e., petty corruption among inspectors; fines imposed on larger employers who are perceived as having the ability to pay); a suspicion against foreign workers that slows the approval process and limits the extent to which private employers may engage the workers they need; and a lingering socialist mindset from older generations. Yet the Ministry of Labor appreciates the need for private sector growth in the country, including through wage labor. Aside from the issue of foreign workers, most employers generally feel that the ministry allows them space to grow. On the issue of foreign workers, however, the ministry is clearly unreceptive. Its representatives profess doubts that foreigners can offer the important agriculture-related skills that are found at home and believe strongly in the need to supplement the judgment of private sector employers with their own views of the relative qualifications of workers. This view contrasts sharply with the perspective of employers in the agricultural sector, who feel they lack access to experienced managers and mid-level agriculture specialists in key fields such as poultry and horticulture.

The Ministry of Labor holds many of the normal functions found in such an agency, including rule-making, inspection of workplaces, research, and maintenance of some statistics. Over the years, the ministry has received assistance from various donor agencies. As with most government institutions interviewed during this diagnostic, however, such assistance is considerably disjointed, and the ministry is more inclined to point to additional ways in which it needs support, rather than direct results of programs implemented to date.

**Commission for Mediation and Arbitration of Labor.** The new Labor Law requires that labor disputes must be referred to mediation before they are subject to arbitration or heard before an employment court. In response to this new rule, the government established the Commission for Mediation and Arbitration and Labor, which began functioning in mid-2010. Almost immediately, the Commission found itself with a heavy workload. To date, however, it has not been involved with a significant number of cases involving employers in the agriculture sector. Regardless, the Commission should be encouraged to track its cases effectively, including maintaining data pertaining to the type of cases it handles, the sector from which the case derives, the time it takes to resolve the case, and the steps that followed, if the case was not resolved by mediation. This information will help inform policymakers and employers about key issues in labor-employment relations, including in the agriculture sector, in the future.

### 3.4 SUPPORTING INSTITUTIONS

**Labor unions.** Mozambique has two major labor syndicates, CONSILMO and ATM, which represent the various sub-sectors within the country's major sectors, including industry, services, and agriculture. Consistent with the relatively low skill-base of workers in Mozambique and the high demand for any type of livelihood, these syndicates and their member unions are not particularly strong. Traditionally, however, they have been close

#### KEY SUPPORTING INSTITUTIONS LABOR UNIONS

- Extension services
- Farmers' organizations
- Agricultural household surveys
- Education and training institutions
- Public sector employees

to the government, and the expansive wording pertaining to worker rights in Mozambique's constitution of 1990 illustrates this fact. That said, interviews during this diagnostic indicated that labor unions are eager to work more closely with businesses to encourage more formal employment of workers. "We see the private sector as a partner," one union representative stated during this diagnostic. On the other hand, labor unions currently face a potential conflict among their constituents. While higher food prices may benefit some farmers in the rural areas, they are a burden on urban workers who do not grow food. Increased productivity on Mozambique's farm would help address the priorities of both sides, union representatives acknowledge.

**Extension services.** The purpose of agriculture extension services – whether provided by the public sector, the private sector, or NGOs – is to supply farmers with the necessary unbiased knowledge and research information to improve their productivity, processing capabilities, ability to manage pests, quality of outputs, and other key aspects of agriculture. To share this knowledge, extension agents must themselves have practical training in their respective areas of expertise, which may include animal agriculture, commercial horticulture, farm health and safety, field crops, food safety and processing, pest management, or specialty crops. Agents also need access to topical and timely research and information about recent experiences and trends on the farms.

Mozambique's public extension service (Direcção Nacional de Extensão Agrária) was established in 1987 within the Ministry of Agriculture and currently employs around 800 agents, up around 15% from 2008. Although it operates in all but one of the country's districts and annually "provides support" to more than 350,000 farmers, DNEA is scarcely able to serve its primary functions.<sup>42</sup> According to many agricultural professionals, the agents are themselves poorly trained, having typically been educated in agricultural technical schools that offer little practical experience, and generally holding no more than the estimated equivalent of an 8<sup>th</sup> grade education.<sup>43</sup> The agents also lack such critical resources as transportation, access to functioning laboratories, and tools and inputs that would help them support the farmers they serve. In addition, extension agents have few opportunities to share useful information and experiences among themselves.<sup>44</sup>

During this diagnostic, many donors spoke of their interventions and activities in various agricultural subsectors, including seed, poultry, horticulture, and others. Few, however, could provide tangible examples of how their work directly with or on behalf of farmers intersected with the work of DNEA. Some suggested that public extension officers feel discouraged and apathetic over their relative lack of resources, compared to those available through donor-funded programs. Others said that extension officers are poorly managed and do not themselves step up to opportunities they may have to strengthen their own offerings. At worst, donors and others bypass extension officers as "more trouble than they're worth," rather than integrating extension agents into initiatives. DNEA is left out of many reform initiatives because extension officers seem to have little, if anything, to contribute; however, the need for expertise among extension officers is the very reason that they should be included more often.

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42. See IFPRI, *Agricultural Extension and Advisory Services Worldwide (Mozambique)*, available at <http://www.worldwide-extension.org/africa/mozambique>.

43. USAID/DAI, *Mozambique/Human Capacity Building Assessment – Agriculture Sector*, supra note \_\_, at 6.

44. Id.

Analysis of Mozambique's extension services indicates variable results depending on the crop being serviced and the region in the country. Rural household surveys taken in 2002 and 2005 indicate that extension services for cotton and tobacco (two crops with relatively strong access to inputs such as fertilizer, as well as access to private extension services) generally result in improved crop income. However, extension services for other crops show no impact on farm income in the north, while there was some impact over time in the south.<sup>45</sup> It would be enormously useful to analyze the same data as tracked under the 2007 survey. Moreover, the need for a new survey in 2011 is evident with respect to this issue, among many others.

Private sector extension services – direct assistance from companies, usually those that provide seed, fertilizer and pest control – are present in Mozambique to a limited degree, mostly in the tobacco, soy and sesame crops. A thorough understanding of the presence of private extension should be part of overall analysis and planning, as well as a strategy to more effectively integrate public and private sector extension programs. Indeed, with a tiny public extension service and increasingly robust NGO and private services, Mozambique has a good opportunity to seek out a healthy mix approaches.

**Farmers' organizations.** With varying degrees of success, donors (including USAID, most recently through the AgriFUTURO project) have devoted a great deal of effort toward the development of farmers' organizations over the years. According to one estimate, around 7.3% of farmers in Mozambique belonged to a farmers' organization in 2005, up from 4% in 2002.<sup>46</sup> This number has likely increased in recent years – indeed, there is enormous need for continued tracking and analysis of this figure.

The more successful farmers' organizations are oriented around multiple crops, including cash and staple crops, such as cotton, sunflowers, sesame, soybeans, groundnuts, or poultry. Their successes almost invariably depend on donor support, however, and there are few examples of organizations that have emerged and thrived without significant donor involvement. One subsector with a relatively strong track record for farmers' organizations is the poultry industry, which has grown significantly in recent years. One key approach, according to practitioners familiar with those organizations, is to focus on the competitiveness of the industry association, rather than support farmers' inclination to view it as a mechanism for protectionism.

The recent enactment of the Law on Cooperatives has also led to donor support for the transformation of some of the larger farmers' organizations into formal cooperatives.<sup>47</sup> This is a slow process, however, with few organizations ready to take on the formal requirements of the law. The prevailing view in the rural areas is that the law stems from a "supply-driven" initiative – that is, the good intentions of donors. A great deal of work remains to be done on the threshold issue of promoting understanding and consensus of the potential benefits of cooperatives.

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45. David Mather, Cynthia Donovan, and Duncan Boughton, Newsflash: Measuring the Impact of Public and Private Assets on Household Crop Income in Rural Mozambique (2002-05) (November 5, 2009), at 3; see also Maren Elise Bachke, Are farmers' organizations a good tool to improve small-scale farmers' welfare? (April 22-23, 2009; II Conferencia do IESE).

46 Maren Elise Bachke, Are farmers' organizations a good tool to improve small-scale farmers' welfare?, *supra* note 30, at 9.

47. For a discussion of the process of developing the new Law on Cooperatives, see USAID/OCDC, *Creating Clarity: Assessment, Analysis and Outreach for Cooperative Legal Reform* (2009) at 47-50. Like many countries in Sub-Saharan Africa, the public perception of cooperatives in Mozambique was undermined during the socialist period, when cooperatives were organized "primarily to supply food for cities, without regard for the trade or marketing aspects of the businesses or for democratic member control." *Id.* at 47.

Continuing to dismantle the negative associations with prior, state-led approaches to cooperatives is critical to getting growing farmers organizations to take seriously this new opportunity in profit-driven enterprise.

With respect to the emergence of cohesive, well-organized farmers' organizations, the experience in Mozambique has clearly been mixed, with hopes and expectations considerably exceeding results. For example, the World Food Programme's Purchase for Progress (P4P) project seeks to purchase high-quality grains from Mozambique's farmers' organizations, but has found that supply and consistency of product is far less than it needs. As a result, WFP continues to import more than 90% of the food it supplies. Some donors have found that helping identify buyers (thereby creating demand) is a key component of building successful organizations. Providing contract guarantees is one way to help farmers secure credit to purchase inputs. In the north, IKURU is a successful example of an organization that provides fertilizer and seed to its members; exports goods on behalf of its members; supplies WFP with high quality product; and provides guidance in the organic and Fair Trade certification processes.

There is room for better understanding of best practices within Mozambique's farmers' organizations and more effective sharing of that information. Complaints about the effectiveness of the groups tend to relate to issues of general capacity – including general management issues, willingness and ability to seize opportunities for economy of scale, and poor use of inputs, even when they are available. There further seems to be few if any meaningful links between farmers' organizations and training and educational institutions, such as agricultural schools and agriculture faculties.

**Agricultural household surveys.** Since 2002, the Ministry of Agriculture has, with the support of USAID and Michigan State University, undertaken a series of rural household surveys in Mozambique (known as the TIA). To date, three full surveys have taken place (2002, 2005, 2007), and with a fourth possibly scheduled to take place in 2011. This survey is a source of critical information about the profile and needs of the country's agricultural workforce, and also provides significant employment data, including information about income derived from seasonal labor. The need for a better understanding of the impact of the country's extension services and farmers' organizations, among other key data points, warrants a strong push for continued implementation of this survey.

**Education and training institutions.** The fact that education for native Africans in Mozambique has largely been formalized just in the years since independence explains a great deal about the country's high rates of illiteracy and weak overall capacity. Indeed, progress in recent years bodes well for the future. Building the skills of a nation that was essentially deprived of meaningful educational opportunity for generations, however, takes time.

**Primary and secondary education.** Upon independence in 1975, Mozambique's education system was almost non-existent and illiteracy was common, particularly among rural populations. The new government aspired to provide universal education, but the protracted civil war gravely diminished opportunities even for basic schooling. Since 1997, the number of children in primary schools has grown from 1.7 million to about 3.8 million; the number of primary and secondary schools increased from 10,000 to 12,000 between 2004 and 2008. The growth in school attendance means that most public schools operate through a system of two or even three shifts. According to UNICEF, the school fee for basic education, an obstacle for most children from poor and vulnerable households, was abolished in 2005. Many other sources report, however, that school fees continue to be imposed on many families, such as costs for uniforms, books, upkeep of the school, or other charges that may dissuade students from enrolling. In rural areas, stakeholders should continue to monitor the presence of children engaged in household or farm work, especially when they should be attending school.

**TABLE 4: LITERACY  
ADVANCES IN  
MOZAMBIQUE**

*(compiled from various  
sources)*

Year	Adult population, Percent literate
1992	34
2007	44.4
2009	54.0

In 2000, the Ministry of Education launched a process of decentralizing curriculum development and monitoring. This system allows 20% percent of the national curriculum for basic education to be the “local curriculum” – that is, this portion of the curriculum is to be developed locally. Although the impact of this exercise is beyond the scope of this inquiry, whether and to what extent local curriculum integrates key issues in the agricultural sector would be useful to understand.

**Vocational and agricultural schools.** Mozambique operates a system of vocational and technical schools which serve about 30,000 students each year, approximately 30% of whom are women. A number of these schools are dedicated to agriculture or food management. Notwithstanding dedicated assistance efforts, particularly by the World Bank and the German government, the need for updated approaches to agricultural vocational training and better facilities remains vast. Most vocational programs are trapped in skills-training curricula that might have been useful for the workforce of the 1970s or 80s, but few have the knowledge and the dedicated equipment to train students in necessary skills for modern agriculture. The need for technical specialists in Mozambique is great: it is in the area of mid-level technicians and managers, offering expertise in such areas as poultry management, seed development, soil management, and crop oversight, for which companies often seek foreign labor due to low availability of local supply. At this time, the agricultural vocational schools is not perceived as reaching that need.

**University education.** There are more than 25 degree-granting public and private institutions of higher learning in Mozambique. The growth of private institutions in recent years has been greeted with ambivalence among the country's traditionalists: during this diagnostic, various observers expressed legitimate concern over private institutions' quality control and responsiveness to student needs. Some also exhibited, however, misplaced wariness over the inherent capacity of private institutions to engage in higher education. Ultimately, demand in Mozambique for higher education and other post-secondary training opportunities exceeds public supply, and it is appropriate that the private sector is striving to fill the gap. “Even the prostitutes are taking classes,” one law student reported. Future donor assistance in higher education should provide equal opportunity for participation of both public and private institutions.

Agricultural disciplines and agricultural economics have long been core offerings within Mozambique's national university structure, but there is a shortage in doctoral-level expertise. There is a "clear need for more formal higher education at the master's and Ph.D. level" in agricultural economics, according to one well-informed observer. As for disciplines such as soil management, veterinary medicine and services, and others, even the relatively strong national university is unable to meet the needs of its students. Recently, a new campus for agriculture was abruptly opened, but that reportedly took place with insufficient planning and little support from the faculty and few resources for students. Laboratories, fields, and greenhouses are lacking on most campuses. There are few links with the private sector, despite the demand for skilled labor coming from key agricultural employers. Also, students who gain places in universities through well-intentioned affirmative action programs tend to be neglected once they begin their programs of study. More effort should be dedicated to fostering high-potential students from rural areas and ensuring that their graduation rates match those of urban students.

In the north, local employers reportedly have a hard time hiring local university graduates, who often head to Maputo for what they perceive as better employment opportunities. USAID, the Ford Foundation, and others have successfully supported stellar students to study for higher education degrees in the United States.

**Public sector employees.** Although this diagnostic found the business community relatively satisfied with the attitudes of the government toward the private sector, prevailing opinions were that public servants do not share the view that private sector activity is to be supported and facilitated. An enormous mistrust for government stems from the daily interaction of Mozambique's citizens with public sector employees who are enmeshed in systems that discourage confidence in government systems due to their outright corruption. The public sector "desperately needs reform," according to many interviewees. Among other reasons, the compromises and conditions of doing work in the public sector discourages strong skilled workers from staying in the system. "Everything is political" and "technical skills are frightening to politicians," according to one respondent. Another local observer asserted, "Civil servants *want* bureaucratic steps" in the administration of their duties because those steps enable them to seek favors as a means of moving along the process. At the same time, public employment tends to be a popular destination for skilled workers.

Beyond general dissatisfaction with extension services, there seems to be a particular lack of trust among farmers and other stakeholders in the Ministry of Agriculture. Examples cited during this diagnostic included the perception that its production estimates are not grounded in meaningful data collection, but rather are "very vulnerable to political influence."

### 3.5 SOCIAL DYNAMICS

Mozambique's key social dynamics as they pertain to employing workers are discussed above, including a lack of capacity in the workforce and within farmers' organization, which limits the effectiveness of certain efforts, and the ambivalence toward foreign workers, which interferes with transfer of knowledge and skills in the agriculture sector. Additional dynamics pertaining to the agricultural workforce are set forth below.

**The impact of wage labor in agricultural communities.** Although the pace of change is agonizingly slow, as poverty in Mozambique remains painful and deep, recent economic growth numbers show evidence of critical improvements in the agriculture sector, including among larger producers, processors, and exporters. For example, in recent years, Mozambique has begun to strengthen its production of bananas, and now exports the fruit in increasing numbers

to South Africa.<sup>48</sup> The country's larger banana companies now employ thousands of workers, many of whom are holding jobs for the first time. Of course, many of these employees are also small-scale farmers, and conflicts arise when the worker needs to be at two places at once. The poultry industry is also growing rapidly,<sup>49</sup> increasingly offering formal employment opportunities for workers at various skill levels. These employers also are challenged with getting the most out of a low-capacity workforce. The tobacco industry and, to a lesser extent, the cotton industry are more traditional sources of "permanent labor." These employees, often work on an informal basis, however, with payment typically in unreported cash and food.<sup>50</sup> There also is a significant presence of workers from Malawi in Mozambique's tobacco industry.

In the cashew industry, small-scale, labor-intensive factories have grown the country's exports of processed cashews from nearly zero in 2000 to 60,000 tons in 2007. Since 2002, jobs in factories have provided cash infusions into rural communities, as well as all the normal ups and downs of manual labor. With this growth come challenges. Employers must manage hundreds of relatively unskilled people confined to a single space for eight hours a day for the purpose of performing boring, repetitive work. Employees, who, though generally grateful to have a job, experience entirely understandable feelings over what, for some, is pure drudgery. An excellent analysis of these challenges is found in the 2009 paper by TechnoServe, "Rural Transformation and the Organization of Work in Mozambique's Cashew Triangle,"<sup>51</sup> which studies the impact on communities of the dynamics of wage labor. As formal opportunities for wage labor grow, there are undeniable benefits for the children of these workers, particularly where the laborers are women. Women are now understood to devote more of their incomes than men to the welfare of their children, providing better nutrition and better access to education.<sup>52</sup>

**Women workers in the agriculture sector.** Mozambique has long held more progressive attitudes toward the legal rights and economic and political roles of women than some of its neighbors, as evidenced by the language of its constitution as well as in its surprisingly strong showing in the World Economic Forum's most recent Global Gender Gap Report.<sup>53</sup> The practical application of these open-minded principles and policies has been stymied, however, by the

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48. Times Live (South Africa), "Farming in Africa 'no nirvana'" (April 3, 2011) (concerning experience of South African farmer who began exporting bananas from Mozambique); FreshFruitPortal.com, "Mozambique banana exporter edges closer to U.S. and Europe" (Feb. 25, 2011).

49. Technoserve Blog, "Growing Poultry Industry Transforms Lives in Mozambique," (February 18, 2011) (asserting that poultry grew to a \$160 million industry in Mozambique in 2009, compared to \$25 million in 2005. The industry has helped create more than 90,000 jobs, including tens of thousands of small-scale farmers who produce soy and corn for poultry feed).

50. Benefica, et al., *The Economics of Smallholder Households in Tobacco and Cotton Growing Areas of the Zambezi Valley of Mozambique* (Ministry of Agriculture Research Report No. 59E, August 2005).

51. This paper is available at <http://www.technoserve.org/assets/documents/factoriesinthefield.pdf>.

52. See Nicholas Kristof and Sheryl WuDunn, "The Women's Crusade," *N.Y. Times Magazine* (August 23, 2009) ("In general, aid appears to work best when it is focused on health, education and microfinance ... And in each case, crucially, aid has often been most effective when aimed at women and girls; when policy wonks do the math, they often find that these investments have a net economic return. Only a small proportion of aid specifically targets women or girls, but increasingly donors are recognizing that that is where they often get the most bang for the buck").

53. World Economic Forum, *Global Gender Gap Report* (2010). Although Mozambique ranks 22nd in the world (out of 134 measured) for relative equality between the sexes, its high rankings for economic participation (5th in the world) and political participation (11th) should not obscure the country's poor relative showing with respect to health and survival (110th in the world) and education (122nd).



poor access of women to education, at least until recently. At least 60% of women over 30 in Mozambique, and likely more in the rural areas, remain functionally illiterate; the good news, however, is that literacy of younger women has improved dramatically in just 10 years – as of 2009, it was as high as 63%. On the other hand, pregnancy at an early age continues to be a socially accepted practice in many communities, with the practical impact being that pregnant girls and girls with children do not continue their schooling.

Rural women in Mozambique face particular hardships which include not only discrimination in education and employment opportunities, but also exceptionally poor access to healthcare, resulting in high rates of mortality during childbirth. Women are, nonetheless, economically active in many regions of the country: Women as traders, for example, are important in the south.<sup>54</sup> In the north, however, men dominate trade in agricultural products. “The more commercialized the crop,” according to one observer, “the fewer women involved.” This is reflected also in wage-earning jobs. In the tobacco industry, for example, the vast majority of formal employees is men.<sup>55</sup> Retail trade for all regions – selling at local markets – tends to be dominated by women.

**Equal opportunity? Mozambique’s legacy of the past.** Mozambique’s constitution prohibits discrimination by race. This rule extends to the collection of census data, which is not disaggregated by race. While the majority of Mozambicans are of African descent, the country is also the home of many people of Indian, European, and Arab lineage.

During this diagnostic, the issue of race did not come up during most interviews with stakeholders. Nonetheless, it was notable that the majority of people currently managing large agribusinesses come from Indian, European and Arab minorities. Much of this racial discrepancy can be explained by two phenomena: 1) a relatively low rate of managerial skills among African Mozambicans stemming from a poor education system, and 2) general views throughout society about the lack of profitability of agriculture. Given that much of the university training in the past two decades has focused on preparing students to become government employees, private sector management skills have not been emphasized. Therefore, companies seem to have a preference for people who may have been educated abroad, and often, that is the case for white Mozambicans. Culturally, it is also the belief among poorer Mozambicans that the way out of poverty is to study medicine or engineering. This mindset has resulted in a generation that lacks both business and agricultural skills that are necessary to successfully manage a large agribusiness.

## **3.6 RECOMMENDATIONS**

### **ENSURE PRIVATE SECTOR CONTRIBUTION TO THE DEVELOPMENT AND PROMULGATION OF REGULATION ON AGRICULTURE**

According to the Ministry of Labor, the development of a regulation pertaining specifically to the special labor-related concerns of the agriculture sector is underway, in consultation with the ILO. This regulation should be treated as a priority policy issue and its progress tracked by stakeholders concerned about flexibility, access to skilled labor, and other key concerns of employers in the sector. Model regulations from countries that have successfully grown their

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54. See, e.g., Fion de Vletter and Emilia Polana, *Female Itinerant Maize Traders in Mozambique: A Study of a Higher-End Informal Sector Activity and its Potential for Poverty Reduction* (ILO/SAMAT Discussion paper No. 17) (2001).

55. The Economics of Smallholder Households in Tobacco and Cotton Growing Areas of the Zambezi Valley of Mozambique, *supra* note 49, at 20-23.



agriculture sectors in recent years, including Brazil and Costa Rica, should be integrated into the development of this regulation.

### **REVISIT ASPECTS OF THE LABOR LAW THAT UNNECESSARILY RAISE THE COSTS AND BURDENS OF FORMAL EMPLOYMENT, THUS ENCOURAGING EMPLOYERS TO TAKE ON NEW EMPLOYEES**

As noted, certain aspects of the Labor Law are not conducive toward strong management of employees and productive company practices. Through CTA and its interested member organizations, the private sector should collect and disseminate specific issues they have with employment requirements – pertaining to, for example, leave allowances and firing and redundancy procedures – and meet with the Ministry of Labor and other policymakers in an effort to make the law more responsive. The draconian procedures for laying off employees is one area that should be advocated for modification and change, such that the system of hiring and firing in the private sector is entirely “at will.”

### **DEVELOP A “HIGH-GROWTH JOB TRAINING INITIATIVE” THROUGH A GRANT PROGRAM THAT RESPONDS TO LOCAL IDEAS FOR LINKAGES BETWEEN TRAINING AND EMPLOYMENT.**

Among the key findings of this diagnostic’s inquiry into Employing Workers is lack of critical connections among institutions concerned with developing the capacity of Mozambique’s workforce – from farmers’ organizations to private employers to extension services to universities and technical schools. The U.S. Department of Labor has developed a model for a high-growth training initiative that can provide some useful lessons for Mozambique.<sup>56</sup> The underlying principle is to connect the needs of potential employers with the skills of workers, and, where those skills are insufficient, to leverage various resources to build them accordingly. A high-growth job training initiative in Mozambique could target four to six areas within the agricultural workforce that have one or more of the following aspects:

- anticipated job growth (for example, the poultry industry; export services; farmers’ organization or cooperative administration);
- impact on the overall agribusiness sector (such as soil testing, cited by many interviewees as a critical deficit);
- impact on the growth of other sub-sectors (such as transport, packaging, or cold-storage);
- recent transformation in required skills (including new technologies and innovations); or
- impact on development of new high-value crops.

Such an initiative can be instituted through a grant program, through which institutions are invited to work together to develop proposed opportunities to develop high-growth jobs. For example, grants could require that a minimum of two or three institutions participate in programs

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56. See Johns Hopkins Institute for Policy Studies, Evaluation of the High-Growth Job Training Initiative, available at <http://ips.jhu.edu/pub/Evaluation-of-the-High-Growth-Job-Training-Initiative>.

that develop linkages between skills and employer demands. Approaches to these partnerships might include internship programs, adjunct teaching relationships between businesses and universities, private sector-sponsored laboratories or equipment in classrooms, and other experiments in leveraging resources to develop needed capacity.

## **CONTINUOUSLY TRACK AND ANALYZE MOZAMBIQUE'S EXPERIENCE IN DEVELOPING FARMERS' ORGANIZATIONS**

The model of encouraging farmers to work together to achieve efficiencies in production and marketing and to improve product quality is one on which there is consensus about the benefits. In particular, small-scale farmers, who resist opportunities to coordinate efforts, diminish their own potential and livelihood. That said, despite years of interventions and effort, the donor experience in developing farmers' organizations has been mixed. Although there is a wealth of lessons learned in this topic, those lessons may not be shared as effectively as they might. Donors should work together to analyze all donor and government support directed over the past five years to farmers organizations, with an eye toward lessons learned and pitfalls to be avoided. Donors should also identify those interventions that were started and then abandoned (such as websites or technical assistance initiatives) and determine whether they should be revisited or re-launched. In this process, there is an opportunity to create linkages between more well-organized farmer associations and Mozambique's agriculture-oriented vocational schools and university faculties, developing partnerships in marketing and business development services.

## **REVISIT THE POTENTIAL FOR STRENGTHENED VOCATIONAL EDUCATION OPPORTUNITIES IN THE AGRICULTURE SECTOR**

There appears to be ambivalence in Mozambique among policymakers and donors about the value of vocational and technical education generally. Anecdotal evidence from private employers indicates, however, that the very type of mid-level skills that can be developed through vocational agricultural programs could be enormously useful. Certainly, existing agricultural institutions should not be consciously left out of donor initiatives geared toward strengthening worker capacity. The potential for strengthening vocational offerings should be considered through the following analysis and approach:

- Identifying the private sector's most prominent demands for skills;
- Assessing and updating skills of instructors;
- Encouraging and overseeing internships and practical, on-the-job training for vocational students as a core aspect of any vocational program;
- Encouraging greater gender diversity among vocational programs so that students are matched with opportunities that best match their skills and interests (i.e., refrain from directing girls primarily toward beauty or administrative-type programs);
- Upgrading the type of skills being taught to match the more efficient and sophisticated approaches to agricultural productivity than have been used in the past;
- Matching less well-funded vocational-technical schools to the more expansive resources

available through university and donor agricultural programs;

- Ensuring that adequate equipment is available at the vocational schools. This is a difficult and expensive issue, but one that can again emphasize private-sector sponsorship and engagement in the training programs themselves; and
- Including entrepreneurship (including access to investment and credit) as a core aspect of any vocational training so that students are trained not merely to expect employment upon graduation, but rather feel knowledgeable about what it takes to start their own businesses.

## **THROUGH SHORT COURSES OR SUMMER PROGRAMS, STRENGTHEN SUPPORT FOR RURAL STUDENTS ATTENDING UNIVERSITY IN AGRICULTURE-RELATED TOPICS**

Mozambique's public universities seek to serve students who come not only from the more prosperous school districts – generally in urban areas, especially Maputo – but also students from rural areas that often arrive at university with fewer resources and a thinner educational background than their peers. These students may initially present lower test scores than their classmates, but they otherwise represent an important resource for added expertise in their respective regions. According to academics interviewed for this diagnostic, however, rural students in faculties of agronomy and other agricultural disciplines typically fail classes or otherwise drop out of school at rates much higher than their urban cohorts. This assertion warrants scrutiny – relative drop-out rates ought to be definitively tracked – followed by targeted remedies. Pre-enrollment summer classes, mentoring, and tutoring ought to be offered to these students with an aim toward keeping them in school and ensuring their graduation.

## **RESEARCH AGRICULTURE-RELATED BRAIN-DRAIN AND DEVELOP STEPS TO ADDRESS IT**

Statistics on “brain-drain” in Mozambique – the emigration of the country's skilled labor to other countries – are insufficient and unreliable. It is clear, however, that Mozambique cannot afford to lose its most skilled professionals, particularly in the agriculture sector. Under the following guidance, research and response of the brain-drain issue is warranted:

*It is more realistic to lure back young African scientists rather than to expect senior academics and researchers to leave the Diaspora and return permanently to Africa. It is even more desirable to focus instead on preventing the next generation of scientists from migrating in search of a more professionally and personally rewarding career. But both political and scientific leadership are needed to support the development of an attractive package of monetary and non-monetary incentives to encourage young scientists to remain home. Start-up research grants and rapid career advancement are key components of a strategy to prevent future brain drain.<sup>57</sup>*

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57. Interacademy council, “Halting the Brain Drain,” available at <http://www.interacademycouncil.net/CMS/Reports/AfricanAgriculture/6974/7346.aspx>.

Employers interviewed for this diagnostic indicated that they are eager to enlist high-skilled workers, including within the growing agriculture sector. Moreover, employers are well aware of how difficult it is to hire foreigners – thus, Mozambicans educated abroad can return to a fairly robust jobs market. That said, wages in Mozambique are relatively low.

## **PROMOTE AGRICULTURAL EXPERTISE IN PROFESSIONAL EDUCATION**

In Mozambique, a recurring theme with respect to many professions – law, banking, accounting, management, etc. – is that professionals lack expertise in the area of agriculture specifically. Perceived risks are often cited as reason for not going forward with loans, investments, or enterprise growth plans. However, one economist interviewed for a previous AgCLIR diagnostic said, “Risks of agriculture can be over-exaggerated” and, particularly among people who understand the sector, “they can be managed and minimized.” Bankers rarely are specially trained in products or risk-minimizing tools pertaining to agriculture. Although certain related courses are offered, the curriculum of Mozambique’s law schools does not currently reflect the extent to which its economy depends on agriculture. A program dedicated to strengthening agriculture awareness among the country’s professionals should address these issues, along with similar circumstances that are present in business and banking education. Elements of such a program could include the following:

- Cross-enrollment between faculties;
- Team teaching of agricultural law and business classes;
- Creation of an “agriculture law and business” journal, developed as a multi-faculty initiative; and
- Academic conferences addressing key topics in law and agriculture.

## **REVIEW AND REFORM POLITICAL AND LEGAL UNFRIENDLINESS TOWARD THE USE OF FOREIGN WORKERS AS A SOURCE OF KNOWLEDGE AND SKILL-BUILDING, INCLUDING IMPLEMENTATION OF SIMPLE MECHANISMS THAT CAN GET NECESSARY SKILLED LABOR INTO THE COUNTRY WITH MINIMAL GOVERNMENT INTERFERENCE**

Despite clear awareness of the low capacity of agricultural workers in Mozambique, the hostility exhibited by policymakers and government representatives toward the enlistment of skilled foreign workers in the country is startling. Mozambique would be well served to review a lesson from Rwanda which, recognizing similar capacity constraints in 2007, revised its own policies toward foreign workers and ultimately dismantled most of its bureaucratic constraints against them. Rwanda went beyond begrudging acknowledgement of the need for outside expertise and instituted simplified systems, including a straightforward online work-permitting process, to allow companies to access the workforce they need in as short a time as possible. The goal is not to take over jobs that would otherwise go to local workers, but rather to allow companies to fulfill their immediate needs for skilled labor with minimal hassle, while also fostering opportunities for local workers to gain on-the-job training from those who have the benefit of more up-to-date knowledge. Current procedures for hiring foreign workers in Mozambique, particularly beyond the strict limits set forth by the Labor Law, are overly cumbersome and overwhelmingly opposed by employers who are seeking to grow their businesses in the short-term.

## **ENLIST THE MOST CURRENT KNOWLEDGE IN BEST PRACTICES IN EXTENSION SERVICES, WHILE ALSO WORKING TO BETTER UNDERSTAND THE LIMITATIONS AND OPPORTUNITIES IN MOZAMBIQUE'S CURRENT EXTENSION ENVIRONMENT**

Acknowledging that a mix of public, private and NGO-sponsored extension can play a critical role in the development of on-farm agricultural capacity, Mozambique has an opportunity to take advantage of USAID's global commitment to better understanding extension services. The new Modernizing Extension and Advisory Services (MEAS) project, which will be implemented by the University of Illinois (including many partners, such as Michigan State University), aims to "define and disseminate good practice strategies and approaches to establishing efficient, effective and financially sustainable rural extension and advisory service systems."<sup>58</sup> Specifically, the project will develop knowledge in the following areas:

- Comparative advantage of public extension, private sector firms, and NGOs in providing specific types of extension/advisory services for different types of farmers;
- Alternative models of making public extension systems financially sustainable;
- Developing an organizational structure to make public agricultural extension systems more farmer-driven, including participation of limited-resource male and female farmers, young farmers/rural youth, landless households, and disadvantaged groups;
- Using micro-credit to mobilize women's self-help groups and enabling landless rural women to undertake new enterprises using community property resources;
- Transforming Farmer Training Center demonstration farms into both effective farmer-demonstration centers and revenue-generating units; and
- Building public-private partnerships by training private input supply dealers to become both competent and trustworthy advisory service providers.

Stakeholders in Mozambique – including the Ministry of Agriculture, educational institutions, and private sector actors – should be encouraged to follow and respond to this knowledge as it emerges. At the same time, stakeholders should continue to develop their own understanding of why certain extension interventions in Mozambique have raised farmer income, while others have not. Finally, donors developing on-farm capacities should avoid the inclination to bypass incorporating public extension agents into their work. Although they likely need the relevant training themselves, public extension agents represent an opportunity to provide for sustainability in capacity-building practices, particularly where there are no private alternatives.

## **COMMIT UNEQUIVOCALLY TO UNDERSTANDING AND IMPROVING CONDITIONS FOR WOMEN IN MOZAMBIQUE'S LABOR MARKET AND FUTURE LABOR CONDITIONS**

Given the poor conditions for women in Mozambique's workforce, there is a need for public dialogue over the major differences confronting women and men, particularly with respect to

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58. See MEAS website, available at <http://www.meas-extension.org/home>.

access to education and health services. One area that is ripe for special focus is business development services oriented toward female entrepreneurs in the agriculture sector. It has been shown in other countries that women-focused, relational (as opposed to transactional) business support services provide: nascent women business owners with confidence and counseling; new women business owners with important management skills; and growth-oriented women business owners with contacts, compatriots, and new market opportunities. Future support can be directed toward the following:

- Fostering facilitated peer roundtable discussions, where members would share business challenges and successes;
- Providing specific growth-focused educational programming on such issues as employment law, building an executive management team, providing export promotion activities; exploring new international markets, serving on boards and commissions, and accessing growth capital;
- Forming mentor-protégé relationships, perhaps between these women and counterparts in other countries where they would be the protégées, and domestic mentoring programs where they would be the mentors; and
- Organizing one or more international fact-finding and relationship-building trips for the leaders of women's business associations in the agriculture sector to meet and discuss areas of common interest with association leaders in other countries.

Moreover, there is much to learn about the impact of environmental degradation of recent years (including land, air and water pollution, deforestation, and other problems) on the livelihoods of women. Opportunities to engage women in environmental protection should be explored and developed. Particularly in the rural areas – and as the guardians of their families' health and personal welfare – women are well-positioned to learn about responsible use of pesticides, management of indoor pollution, and reduction of household waste. Stronger orientation to environmental concerns in the future should take advantage of the enthusiasm of female constituencies to serve as guardians of their land, air, and water.



## 4. GETTING CREDIT

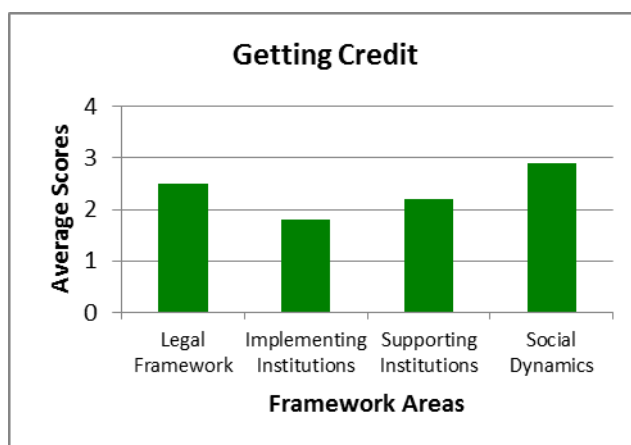
### 4.1 INTRODUCTION

In Mozambique, less than 6% of total formal lending in 2010 was dedicated to agriculture, down from around 10.5% in 2004. A limited group of so-called traditional products (tea, sugar, cashew, sisal, coconut and cotton) are the predominant recipients of agricultural credit (67.7%). Since 2004, only sugar and cashew have shown consistent growth in financing. In contrast, lending to tea, coconut, sisal, and, most recently, cotton has decreased. Recent years reveal a shift in agricultural credit

allocation: in 2004, the traditional products received 78.8% of total credit to agriculture, a figure that diminished to 52.5% in 2010. Nontraditional products receive a growing percentage of agriculture credit, specifically from 21.1% in 2004 to 47.4% in 2010. Formal data is not available to specify precisely what other agriculture products are being financed, but bananas, mangoes, citrus, macadamia nuts, jatropha, and cereals reportedly are among them.

Thus, the primary recipients of formal agricultural finance in Mozambique are crops oriented for export; with the good news in that regard being that the list of export crops is expanding. In real terms, however, lending to all agriculture, especially smaller enterprises, is scant and difficult to access. Even well-established enterprises with ample assets face prohibitively high interest rates when borrowing in the local currency, if they are approved for the loan at all. Especially underserved are producers who, with strengthened access to finance, could far more effectively respond to robust domestic demand. These include producers of eggs, chicken, meat, milk, and even fruit and vegetables that are currently imported but, produced more efficiently, could serve Mozambique's own markets and even be primed for export. Most firms that are able to grow in Mozambique's current business environment must rely on internal funding, informal lending schemes, or retained earnings. With respect to the AgCLIR scoring mechanism, all four areas reviewed fare quite poorly – none had an average score greater than a 3.

Ultimately, this diagnostic found nothing new with respect to the matter of how Mozambique can strengthen its enabling environment for accessing formal credit, including within the agriculture sector. Indeed, throughout the world, the past generation has shown coalescence around key features of a strong credit environment, no aspect of which a country can neglect and still expect access to finance to improve. From the “demand” side, agricultural enterprises (including SMEs and farmers' organizations) must adopt good habits that will persuade potential money-lenders of their credit-worthiness: They need to keep transparent and trustworthy books, including evidence of all business relationships where they have demonstrated their commitment to meeting contractual obligations. They need to build relationships with financial institutions, beginning with savings accounts, which will similarly build their reputations as worthy credit risks. They need to diminish lender risk by increasing their productivity through



effective use of inputs, even if inputs alone are insufficient to make a loan appear less risky to potential lenders. More broadly, they need to embrace a culture of transparency, risk-mitigation, accountability, and adherence to all contracts and formal commitments.

From the “supply” side, the international best practices for a sound credit environment are similarly well known. There needs to be a system of private credit bureaus that accounts not only for past bank lending experiences, but also for other credit experiences. There needs to be a well run, widely used collateral registry that establishes priorities for all types of moveable collateral. Courts must be ready and willing to enforce these priorities with maximum efficiency and minimum interference. There must be a viable registry for land use rights (however a country chooses to package them) that allows for efficient transfer of those rights upon default of a loan secured by them. There needs to be a viable system of crop insurance, one that incorporates best practices – including government guarantees, where necessary – of successful agricultural environments. With respect to microfinance, there must be proper lender supervision; usurious or nontransparent practices must be banished from legitimate institutions, including publically financed lending schemes. Finally, the government must avoid depending on borrowing from local financial institutions in a way that crowds out or otherwise undermines commercial lending and it needs to avoid public lending schemes that undercut the accountability of borrowers.

## 4.2 LEGAL FRAMEWORK

In 2007, USAID sponsored an expansive inquiry into the general state of the Mozambique's financial sector, which confirmed that, despite some positive aspects compared to other low-income countries, the sector remained extremely weak in real terms.<sup>59</sup> Little has changed in that regard: among other issues, there still is no private credit bureau, few options for registering collateral, and minimal access to risk-mitigating insurance. In the meantime, beginning in 2006, a government-backed district lending scheme has created a system in which the 128 district governments “lend” money (around 7 million meticaïs, or around \$230,000 U.S.) to favored local projects which purport to boost agricultural production or create jobs. Although the scheme is defended as well intentioned, it has resulted in *a national default rate of more than 90%*,<sup>60</sup> along with countless stories of kickbacks and mismanagement. In general, the sound lending and borrowing habits required of functioning credit system among smaller borrowers are not being observed in Mozambique, and the district funds seriously undermine efforts to bring good habits into the credit arena.

Against the country's existing legal backdrop – which the 2007 report called “in good shape” – Mozambique's financial sector “can do a much better job of developing new financial services and serving nontraditional clients,” the 2007 USAID report concluded. This continues to be the case. Although certain aspects of Mozambique's financial sector continue to improve in 2011 – every year, there are more banks and financial services available in the rural areas – the agriculture sector remains underserved.

Credit information-sharing. Currently, there is no meaningful system for credit information-sharing in Mozambique. That is, it remains very difficult for banks and other lending institutions to learn, in a systematic and efficient fashion, about a potential lender's past borrowing habits and, thus, the relative risk presented by a loan. Although a public registry exists within the Bank of Mozambique, that system tracks relatively few transactions and has very little relevance to

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59. USAID/Nathan Associates, Financial Sector Constraints on Doing Business in Mozambique (June 2007).

60. AllAfrica.com, District Funding to Continue Despite Huge Defaults (May 11, 2011).



anyone but the largest commercial borrowers. For example, most microfinance institutions do not share their experiences with small borrowers, and other credit histories, such as those enterprises may have with input suppliers or utilities, are similarly not included. The public credit registry ultimately fails to provide thorough, meaningful guidance about the risks of lending to most potential borrowers.

The World Bank's most recent Doing Business report notes the percentage of individuals and firms covered by Mozambique's public credit bureau as just 2.2%. The absence of a system of private credit bureau means that coverage by that mechanism is 0.0%. By comparison, in South Africa there is no public credit bureau, but private bureaus cover 54% of adults and firms. In the United States, private bureaus cover 100% of adults and firms.

The advisability of a system of private credit bureaus has long been underscored by the World Bank as a crucial institution in any modern lending environment. Yet there is no evident movement to push this notion forward in Mozambique. Other countries, in contrast, have integrated the approach into their credit regimes. Rwanda, for example, provides a strong model for how internal commitment and strong leadership can generate tangible results. In 2010, the National Bank of Rwanda (NBR) worked in partnership with private and public sector institutions, notably the national association of banks, the national association of microfinance institutions, insurance companies, and the Rwanda Development Board, with technical support from the USAID, to establish a private credit bureau. The foundation of the system is a new Credit Information System Law (CIS law), which assigns the NBR the role of licensing and supervising private credit reference bureaus. The law protects the privacy of consumers who can decide not to have their credit history shared with the licensed credit bureaus, and further requires lenders and creditors to report accurate and complete information, both positive and negative, on the level of debt and the payment habits of clients. The law also requires new credit applicants to provide written permission to potential creditors for them to obtain a credit reference report and to provide credit information to the credit reference bureau. The consumer also has a right to access and dispute any wrong information recorded in the credit report. In addition to the private system, the BNR's own credit registry has updated credit risk reports it provides to banks and other lenders; it offers both positive and negative credit information; its present and past historical records go back seven years; it includes data on loans of all sizes and payment histories for the entire financial system. The newly licensed private credit reference bureau, CRB Africa, also now offers credit reports on demand. All banks, insurers, the nine largest MFIs, telecoms and other creditors have joined as data providers and subscribers. CRB Africa in Rwanda is well known for its credit reference services across a section of countries in Africa. It would be an excellent model for Mozambique to examine and integrate into its own system.

Zambia provides another important example of how the introduction of a system of private credit bureaus can strengthen the overall environment for doing business. According to the World Bank, in 2008, when Zambia established a private credit bureau, its database initially covered about 25,000 borrowers. After a strong communication campaign and central bank directive, coverage grew 10-fold in two years, exceeding 200,000 at the beginning of 2010.<sup>61</sup>

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61. World Bank, Doing Business 2011 (Rwanda) (2010), at 28.

**Collateralized lending.** In all markets, as long emphasized in the World Bank's *Doing Business* reports, access to finance improves when financial institutions have the ability to secure their loans with collateral so their risk is limited in case of the borrower's default. A modern environment for secured lending typically depends on two key laws and two key registries. First, the land law should provide for the effective collateralization of land use rights: it should set forth the process for land registration; the process for banks to register their security interests in land (or, in Mozambique's case, land-use rights) when pledged as collateral; and the enforcement processes in case of default. It should also establish the legality of the land registry and registrations contained therein. Second, there should be a secured finance law and movable property registry that enables lending on movable property. (In an ideal world, the land and

#### KEY LAWS

- Organic Law of Bank of Mozambique (1992)
- Law regulating the activities of Credit Institutions and Financial Companies (1999, as amended in 2004 and 2006).
- Law regulating the establishment and exercise of the activity of credit institutions and financial companies (2004)
- Decree approving the Regulation of the Law on Credit Institutions and Financial Companies (2004) Decree regulating Microfinance (2004).
- Decree making changes to the Articles n° 54 e 55 of the Regulation of the Law on Credit Institutions and Financial Companies as approved by Decree° 56/2004, December 10<sup>th</sup> (2004)
- Decree establishing additional regulations for the Venture Capital Investment Funds (1999)
- Decree on Venture Capital Companies (1999)
- Notice regulating capital requirements for Credit Institutions and Financial Companies as well as for operators of Microfinance (2005)
- Notice requiring credit institutions that provide credit in foreign currency to non-exporters borrowers of goods or services shall, at the time of granting it, to create a specific provision of 50% of the amount granted (2005)
- Decree regulating the Investment Companies (2006)
- Notice establishing benefits to financial institutions for expansion of financial services to rural areas (2006)
- Notice establishing the capital requirements for Credit Institutions and Financial Companies (2007)
- Law on Foreign Exchange (2009) (accompanying regulations not yet approved)

moveable property registries could also be combined, but this is rarely seen in practice.)

In Mozambique, the constitution's requirement that all land belongs to the state has been interpreted, through the Land Law and other vehicles, as ultimately meaning that land can *never* be used as collateral for a loan. Even where land use rights are firmly held through proper and uncontested registration with land use authorities, they are never regarded as potential security for loans from bank. Rather, only *improvements* to land may be used as such. This fact may indeed reflect domestic public consensus regarding the nature and purpose of land in Mozambique. Change in this norm is widely regarded as a "non-starter." Nonetheless, policymakers must recognize that the non-transferability of unimproved land, in conjunction with the cumbersome procedures surrounding transfer of improved land, does *not* reflect

international best practice, and that, without doubt, it significantly constrains private sector growth in the country.

With respect to moveable collateral, under current practice, banks and other lenders in Mozambique aggressively endeavor to secure loans with any type of moveable property they have a reasonable chance of redeeming for their full or partial value in the event of default. That is, in theory, nearly any type of property can be used to secure a loan: this includes inventory (i.e., a warehouse full of bagged cashews), farm equipment, livestock, furniture, and personal vehicles, including cars and bicycles. The law allows this use of moveable property for collateral: where the law fails, however, is with respect to *securing the actual legal rights of creditors*. Unlike best practice throughout the world – including next door in South Africa – Mozambique’s banks and other financial institutions do not have a unified, properly indexed collateral registry in which to declare and secure their interests in a piece of property. They do try to use what is available, including vehicle registries and the services of notaries, who may verify that there are no competing interests in the property and prepare a document certifying the security interest. They also rely strongly on the personal reputations of the borrowers and on the availability of credit guarantee schemes. Ultimately, however, their security is extremely weak, which explains the extremely low rate of lending, in particular within the agriculture sector, in Mozambique.

Given the ubiquity of secured lending as a development priority in countries around the world for nearly a generation, it is surprising that Mozambique has not identified a strengthened collateral registration regime as a top priority. The experiences of other countries are instructive and show that dramatic, long-term change is possible through a series of deliberate and well executed steps. Again, Rwanda provides an instructive example of how commitment to this change has resulted in not only the establishment of a collateral registry, but also clear improvement in the lending environment for agriculture.<sup>62</sup>

**District development funds.** Under current conditions, formal lending from private financial institutions to small rural projects is essentially negligible. In 2006, in an effort to increase options for local enterprises seeking an injection of capital, Mozambique established a regime known as the “District Development Fund” (FDD). Under the FDD, the central government annually transmits what is known as the “7 million” of local currency to each of the 128 rural districts. The districts are then supposed to identify worthy projects to which they lend money, in an effort to build local entrepreneurship, create jobs, and boost productivity. Although local tribunals are expected to review potential projects and award the loans based on their viability, the districts do not require collateral and they do not formally investigate the credit histories of potential borrowers.

And, far more often than not, they do not get repaid. According to news service reports, between 2006 and 2010, 4.2 billion meticaïs were disbursed through the FDD, while only 227 million meticaïs had been repaid – a rate of just 5.4%. Despite this shocking disparity between the intention of the fund and its outcomes, Mozambique’s Council of Ministers voted in May 2011 to continue the program. There is clearly widespread awareness of the many problems associated with the program – complaints range from the assertion that only locally powerful individuals receive the “loans,” to the understanding the district officials charged with designating the funds routinely seek kickbacks from recipients. Nonetheless, the FDD’s benign intentions to help Mozambique’s poor appear to override such concerns.

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62. Id.

Unequivocally, donors and all other concerned development partners, including the country's network of private financial institutions, should speak out against the current FDD regime. If nothing else, to restore a semblance of credibility to the FDD model, the program should no longer be called a lending scheme – rather, it could simply be re-established as a grant program. Given the FDD's nearly 95% default rate, the damage to public confidence in district government credibility, along with distorted expectations among small producers and other enterprises of *what it means to take out a loan*, is far too great for outsiders to lend their support.

During this diagnostic, local rural lenders articulated serious and legitimate concerns against the FDD. Although they accept in principle the worthiness of government support for entrepreneurs through affordable access to credit, they are gravely concerned over the bad habits and mangled public expectations generated by the program. Where local enterprises are led to believe that their commitments will be expunged without consequence – that is, where stealing from public funds is legitimized by the district governments themselves – the same enterprises ruin their prospects for transformation into entities that can access the formal private lending system for sustained growth.

**Macroeconomic policy.** In recent years, several reforms have taken place in Mozambique's financial sector, including modernization of payment systems and controls; foreign currency management; greater central bank independence; adoption of legal instruments to regulate credit concession, capital markets and insurance; and money laundering-prevention mechanisms. A new law regarding microfinance issues was approved.

Significantly, public finance largely depends on the local banking system as the major and low-risk funding source to the public sector. One of the biggest obstacles cited by Mozambican companies is high cost of all banking services, including credit, and the difficulties of accessing finance. Competition between the public and private sector is cited as one factor driving up interest rates. Government borrowing has resulted in decreased liquidity in the financial system, increased interest rates, under-valued local currency, and imports that are more competitive than local production. Significant oil price increases and a strong need for salary adjustments (in the absence of a significant productivity increase) have tended to undermine, at least in the short-term, the competitiveness of Mozambique's economy. Mozambique's financial sector remains "a battlefield" where "all structural problems" of the Mozambique's economy are attempted to be resolved through macroeconomic management to control inflation and value local currency.

In July 2006, the World Bank announced it was writing off \$1.3 billion, all Mozambican debt to the World Bank contracted before January 1, 2005, as part of the Multilateral Debt Relief Initiative (MDRI). In 2007, under MDRI, the IMF wrote off \$153 million in Mozambican debt, and the African Development Bank wrote off \$370 million. As a result of this debt relief, the government's outstanding debt stock fell from 25% of GDP in 2005 to under 12 % of GDP today, or well below debt distress thresholds according to the IMF.

Mozambique's government has entered into several instruments with the IMF and other donors pertaining to access to credit. These include a Policy Support Instrument (PSI) and its accompanying Memorandum of Economic and Financial Policies (MEFP); a Medium-Term Fiscal Scenario plan (CFMP), a Poverty Reduction Strategy Program (PARP); and the Financial Sector Technical Assistance Project (FSTAP). In light of these commitments, the government is charged with fulfilling several conditions in order to continue receiving financial support. Additional commitments include the Memorandum of Understanding (MOU) on Macroeconomic Convergence, adopted by the Ministers of Finance and Investment of SADC, establishing several pre-requisites to the financial system for the ongoing regional integration.

**Monetary policy.** The central bank's organization and role is established by the Organic Law of Bank de Mozambique Law No. 1/ 92, January 3<sup>rd</sup>. Under this act, the Bank of Mozambique's main objective is to preserve the value of national currency and to promote the achievement of proper monetary policy to guide credit policy; to promote growth and economic and social development; to manage foreign assets in order to maintain an adequate volume of money supply needed to trade internationally; and to exercise a disciplinary banking role.

The central bank is charged with maintaining a sustainable macroeconomic policy in conjunction with appropriate fiscal policies. In the perception of many, efforts to contain inflation have had a negative impact on businesses by requiring the containment of credit and monetary circulation, and the consequent rise in interest rates. Another challenge is to supervise the financial system and ensure that it is sustainable and that overall systemic risk is acceptable and also, to promote the growing economic and banking business in the rural areas.

By March 2011, bank interest rates to the private sector were 22.9% for credit, 13% for deposits and 16.5% for government borrowing. The inflation rate (14.98%) has decreased compared with 2010, but remains among the highest in the world. Enterprises that can borrow money in dollars – exporters only – have much better terms – that lending rate is around 9%. “The day I cannot do a dollar loan, I close,” said one representative of a larger commercial agricultural enterprise during this diagnostic.

In May 2011, the government submitted a new revised budget proposal, requesting additional funding to cover a significant subsidies package. The budget proposal pushes government tax income close to 20% of GDP while a significant deficit is expected. This will lead to greater government borrowing in the internal market in competition with the private sector. Government borrowing has consistently decreased since 2007, when it was 67% of total credit, to 27% in 2010. Mozambique's public sector relies greatly on donor support (\$335 Million in 2010) and external borrowing (\$185 Million, September 2010).

## 4.3 IMPLEMENTING INSTITUTIONS

**Bank of Mozambique.** From 1977, when the government nationalized nearly all banks in the country, until 1995, when private banking was again permitted, the Bank of Mozambique functioned not only as the central bank of the country, but also as the sole commercial lender for the country. The harm caused by this move – namely, a culture of unrealistic expectations on the part of the nation's citizenry about debtor responsibilities inherent in borrowing money and other key aspects of free-market economics – persists to this day.

### KEY IMPLEMENTING INSTITUTIONS

- Bank of Mozambique
- Debt collection institutions, including courts

Currently, the Bank of Mozambique governs the country's monetary policy. The central bank regulates the volume of currency and guarantees the supply of currency, including banknotes and coins. It also supervises the country's various commercial financial institutions, including banks and other financial institutions. It is charged with managing payment transfers between and among financial institutions.

There are institutions over which Bank of Mozambique exercises prudential supervision and others where it only has a monitoring role. Prudential supervision entails surveillance and monitoring of compliance with prudential standards, including the solvency ratio, reserves and risk limits, among others. All institutions with Prudential Supervision by the bank of Mozambique can receive deposits from the public. Monitoring is understood as simple oversight of financial

services provided by microfinance operators that are not credit institutions or financial companies, focused on receiving information of a general nature and frequency usually on financial services they provide, particularly for statistical purposes, in view of the follow-up of financial activity they perform.

**Debt collection.** Collecting on collateral of any sort is reported to be nearly impossible through formal channels. There are somewhat mixed impressions of the ability of the courts to take fair and timely action in loan default cases. Some creditors report the legal system tends to favor the defaulter while others report the courts are fair, but all creditors report the process to be too slow.

Lenders universally report that they take all measures possible *before* turning to the court system to collect on a default. An oft-repeated story is that lenders first attempt to negotiate a new payment cycle to get the borrower back on track. A series of negotiations take place if repayment troubles continue. Once it is clear the borrower cannot, or is unwilling to repay, lenders begin collecting on collateral informally – that is, without the court authority to do so. The court is the forum of last resort.

The use of contracts among agricultural producers is rare. When used, it is not uncommon for one of the parties to lack an understanding of the terms agreed to or simply lack the intention to meet those terms. During this diagnostic, one case was reported where a firm entered into supply contracts with smallholder producers that many of the producers were unable to read. The contracts were drafted in Portuguese while most of the smallholders spoke only a local language. It was reported there was no real attempt to translate the intent of the documents, but producers signed nonetheless. At the time of signature, farmers were provided with inputs, which would be repaid to the firm by discounting the payment for the supply bought from the smallholders at the end of the season.

## 4.4 SUPPORTING INSTITUTIONS

### **Banks and other lending institutions.**

Mozambican law establishes two types of financial institutions: Credit Institutions and Financial Companies. Credit institutions include banks, leasing companies, credit cooperatives, factoring companies and investment companies. The financial companies include

brokerage financial companies, brokers, investment fund management companies, asset management companies, corporate capital venture/risk, corporate management group purchasing and exchange houses. Only credit institutions are allowed to receive deposits and or other repayable funds. The financial companies may only carry out operations which are permitted by specific rules governing their respective activities.

As of May 2011, Mozambique's banking infrastructure consists of 15 banks, eight micro-banks, seven credit cooperatives, one leasing company, one investment company, one venture capital company, four savings and credit community organizations, 132 microcredit operators, and 22 exchange houses. The financial system is dominated by three major local banks, BIM (largely held by Portuguese investors), BCI and Standard Bank of South Africa, which account for more than 85% of total assets. The Mozambican financial system is generally young, foreign-owned,

### KEY SUPPORTING INSTITUTIONS

- Banks and other lending institutions
- Financial mechanisms (loan guarantees) supported by donors
- Microfinance institutions
- GAPI
- Crop insurance

and highly concentrated. As of March 2011, the total amount of bank credit to the economy was around \$3.0 Billion (92,398 Million MT). As of March 2010, the country's populace held 1,852,821 debt cards and 76,001 credit cards.



Banks in Mozambique are the main source of lending to government and to the private sector. In November 2010, total credit to the economy (other than government lending) was recorded as the following:

TABLE 5: CREDIT TO THE ECONOMY BY SECTOR	
Industry	11.1%
Construction	7.5%
Commerce	21.6%
Transport and Communication	13.2%
Individual borrowing	17.9%
Housing	3.4%
Agriculture	5.8%
Other sectors	17.3%

In recent years, banking technology and payment systems have been significantly modernized. New banks were authorized to operate by the Mozambique's Central Bank and the number of banks and branches also increased even in rural areas. From year 2002 to 2011, the number of rural districts with bank facilities increased from 28 to 58, for an average of 2,271 Km<sup>2</sup> and 57,000 people. In the same period, bank branches increased from 228 to 415. Bank facilities are very much concentrated in the country's three largest cities, which house more than 50% of total branches. More than 1/3 of total branches are concentrated in Maputo city, as are the majority of all available 743 ATMs (Automatic Teller Machines) and 4,886 POSs (points of sale). From 2006-2010, there was a significant growth in the number of available ATMs (68.3%) and POSs (54%).

#### EXAMPLES OF DONOR-SPONSORED LOAN GUARANTEES INCLUDE THE FOLLOWING:

1. USAID DCA for agriculture – up to 50% guarantee
2. Cashew loan guarantee for cashew processors, also up to 50%
3. ADIPSA Banco Terra loan guarantee – 100% guarantee for smallholders
4. AGRA/Standard Bank/Gov of Mozambique, AGRA guarantees 10% for the global portfolio (not per individual business). If the bank has a portfolio of \$1,000,000, AGRA will guarantee 10% of that portfolio
5. French Cooperation, guarantees up to 50%. It is flexible for all areas not only agriculture (fisheries, agriculture, tourism, industry, etc.)

Mozambican banks have increased the agricultural expertise in their ranks. For example, one large bank recruited a successful commercial farmer to launch a commercial agriculture division within the bank. In six years, this intervention helped increase the bank's agriculture portfolio from almost negligible to about 25% of its banking portfolio, as measured by number of clients.

On the other hand, a lack of agricultural expertise within banks is often cited across the range of stakeholders as a significant constraint against agricultural finance. There is also wariness

about the effectiveness of foreign staff: during this diagnostic, a public official observed that the same foreign-owned banks operating in Mozambique are known for their successes with agricultural finance in their home country, but often find that that experience does not transfer to their operations in Mozambique. Perhaps inadvertently, this observation summarizes the dilemma of all banks in Mozambique: professionals who insist on transparent, amply documented, low-risk transactions may be perceived as less effective than those who play by the old rules of kickbacks, opacity, and high rates of default.

**Financial mechanisms supported by donors.** To encourage financial institutions to lend to creditworthy but underserved borrowers, USAID uses its Development Credit Authority (DCA).<sup>63</sup>

There are four types of DCA arrangements: guarantees for participating lenders on loans to approved borrowers; guarantees on bond issues; guarantees on designated loan portfolios; and portable guarantee commitments provided to individual businesses for negotiating loans with banks of their choice.<sup>64</sup>

In Mozambique, USAID has partnered with several banks to provide DCAs; namely Banco Terra in Nampula and Opportunity Bank in Beira. The DCA for agriculture provides up to a 50% guarantee. Between 2006 and 2010, BCI partnered with USAID to provide DCAs. Despite this partnership, only approximately 50% of the \$4 million guarantee was used, according to informal reports.

The scope of this diagnostic did not include significant review of donor-sponsored loan guarantee programs, including the DCA. But monitoring and review of DCA initiatives and other donor guarantees is critical, and transparency of their expenditures and other results is also warranted. Significantly, there does not appear to be a recently published, widely accessible USAID or U.S. government-generated report on DCA activities. Internal reports may exist, but they are not available for external review and analysis.

**Microfinance institutions (MFIs).** Specific regulations established by Decree Law No. 57/2004, December 10<sup>th</sup> govern MFIs in Mozambique. This legislation establishes all procedures for the establishment, registration, supervision and permitted operations, minimal capital requirements and other aspects of microfinance institutions. The law defines microfinance as an activity that provides small financial services operations. Microfinance operators are defined as institutions that engage in microfinance activities.

The legislation also establishes operations (credit and deposits) allowed or denied to various microfinance institutions. All microfinance institutions that are permitted to accept deposits are subject to prudential supervision by the Bank of Mozambique.

There is an ongoing government initiative to encourage a microfinance network, particularly in rural areas, by lowering start-up minimum capital requirements and other costs, for rural micro-banks, to a level that is extremely low by international standards. There is concern that this policy might encourage the emergence of unviable institutions. But like the commercial banking sector, the microfinance sector is highly concentrated, with four MFIs controlling more than 60% of the loan portfolio.

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63. A discussion of the DCA program and how it works can be found at USAID, ADS Chapter 429, Development Credit Authority (March 2007). There does not appear to be a publically available report of DCA activities in Mozambique.

64. USAID/Nathan Associates, Financial Sector Constraints on Doing Business in Mozambique (June 2007), at 32.

MFIs need to develop a capacity-building strategy to promote their sound development. In April 2001, the government adopted a new Rural Finances Strategy, which aims to increase availability of financial services in the rural areas. Although the systemic risk created by all these institutions is negligible, some MFIs and cooperatives have high levels of non-performing loans and those not engaged in deposit-taking do not always report to the Bank of Mozambique as required.

The microfinance sector receives donor support under a Rural Finance Support Program (RFSP), led by the International Fund for Agricultural Development (IFAD) under the Ministry of Planning and Development. This program that operates through the government's Economic Development Support Fund (FARE) and targets reducing poverty, improving rural livelihoods, and enhancing the viability of rural enterprises through sustainable access to financial services in rural areas.

The goal of the program is to stimulate economic growth and contribute to poverty reduction by improving the livelihoods of rural households and boosting the viability of enterprises in rural areas of Mozambique. Specifically, the program improves sustainable access to appropriate financial services for individuals, groups and enterprises in rural areas, while at the same time creating a conducive institutional and policy environment to support the long-term sustainability and diffusion of rural financial services.

Funds and technical assistance are made available to help financial institutions penetrate rural areas and extend financial services to these remote parts. At the same time, the program helps organize smallholders, artisanal fishers and other poor people in remote rural communities into self-managed financial associations to facilitate improved management of their own economic resources.

MFIs are gradually increasing their share in terms of credit to the economy. Women have a significant share in the credit portfolio of those institutions – often as high as 35%. Microfinance programs in Mozambique have significantly targeted urban female groups; most of them are pursuing service activities (vending and other types of services) in the major urban areas.

**GAPI.** Gapi was established in 1990 by three entrepreneurs. Currently made up of a staff of 142 people, its mission is to design and implement programs and projects that expand, diversify and consolidate the entrepreneurial spirit and strengthen the Mozambican financial system. GAPI's two main lines of intervention include technical assistance to promote the development of SMES (typically through BDS support) and diversification of financial services through financial products and services. Many currently successful entrepreneurs credited GAPI for their initial support and felt that without this institution, their business idea would not have come to fruition. GAPI's goal is to create 30 to 35 small, rural microbanks. Whereas commercial banks are not present in rural areas, GAPI hopes to expand throughout the Mozambican geography to provide services to rural populations.

**Crop insurance.** In most vibrant agricultural economies, the purchase of a crop insurance policy is a risk-management tool available to most agricultural producers. Producers generally evaluate how a policy will work in conjunction with their other risk-management strategies to realize the best possible outcome each crop year. Crop insurance agents and other agribusiness specialists assist producers in developing a good management plan. In highly developed markets, there are insurance products to address almost every risk or situation, including insurance based on production histories, revenue histories, rainfall and other weather expectations, volatile crop values, and others. Often these products originated through government-sponsored programs that subsidized farmers' purchasing of insurance products.

When an agricultural enterprise seeks a loan, the availability of crop or livestock insurance can make an enormous difference to a potential lender's view of risk. In Mozambique, however, opportunities to purchase insurance are negligible. In fact, companies looking for crop insurance

can only get it in South Africa. The lack of insurance is something of an oversight, given the many other efforts donors and the governments make to increase access to credit. Insurance spreads the risk and must be viewed as a critical financial product in the future if the agriculture sector can be expected to grow.

## 4.5 SOCIAL DYNAMICS

**Risk.** At the heart of the low rate of lending in the agriculture sector, particularly to small or new enterprises, is the issue of risk. Agriculture in Mozambique is extremely risky, and, quite rationally, banks are reluctant to assume that risk by lending their money to those who engage in it.

Fundamentally, agricultural production depends on nature. If weather patterns are too hot or too cold, too wet or too dry, or if there is an infestation of pests, crop yield cannot meet hopes and expectations. Irrigation can help mitigate the impact of weather fluctuation, as can improved seed and fertilizer. Pesticides and fungicides can help to lower the impact of infestation. Weather-based crop insurance can further hedge the risks, especially when good data is available. However, most agriculture in Mozambique relies on rainfall, not irrigation. Improved seed, fertilizer and pesticide is only sparingly used, due to high cost, limited know-how, and poor accessibility. Though farmers may wish to take out loans for drought-resistant seeds or other improvements that would help increase their yields, few consider doing so, because they cannot be sure that they can repay the loans and have money left over to feed their families. For them, crop insurance is essentially not available, due to poor productivity from the outset, weak data about output potential, and the inability to price insurance at an accessible level, even with some government support.

Banks are similarly wary over the prospects of non-payment. To a certain extent, they can hedge the risk of default through due diligence activities – that is, careful examination of prospective borrowers *before* they lend, choosing only those with strong, verifiable credit histories (of which, as discussed earlier in this chapter, there are very few) – and by securing the loans with collateral. Yet, in Mozambique, there simply are few well established, “credit-worthy” agricultural enterprises to lend to, and, due to negligible maintenance of credit histories, little information that leads to informed choices about which smaller enterprises might be worth the risk. The fact that land is not an available option for securing credit significantly reduces the risks that banks are willing to take. Mozambique in fact has a relatively robust system of using alternatives to land (including such collateral as buildings, farm equipment, inventory, and livestock) to secure bank loans, but the value of these loans is necessarily kept relatively low.

In vibrant lending environments, private lending institutions can rely on a consistent policy regime to effectively predict their ability to make a return on their investments, whether those investments are directed toward a smallholder farmer or a large-scale agri-processor. In fact, in recent years, Mozambique’s government has diminished its propensity to intervene in markets, whether through trade bans, formalized price-setting arrangements, or direct interventions in the financial sector. This strengthened commitment to market predictability has, in fact, contributed to a stronger lending environment. Nonetheless, in Mozambique, with limited hedges to natural risks and limited financial infrastructure to minimize repayment risk, banks price loans to protect themselves – excluding most poor customers – or simply focus on other sectors.

**Alternative approaches to financing.** Rural finance, specifically for agriculture, requires loan products that differ from the typical menu in urban environments. For example, it is useful to

structure loans according to the products at issue. Banana, cashew, maize, and poultry, as well as many other agricultural products produced in Mozambique, have different production cycles. Thus, financial institutions should be encouraged to develop products, including terms for repayment, that are commodity-specific. They should also offer different loan products for different stages of the value chain, including production, start-up, or expansion.

Moreover, lenders should fully anticipate the fact that producers of any given commodity will generally harvest at the same time. With a glut of supply on the market, they will face an uphill battle negotiating a fair price. In ideal circumstances, warehouse receipts schemes enable farmers to store their goods and obtain credit until they can negotiate a better price. However, Mozambique has not yet undertaken a significant warehouse receipts initiative, despite the idea long being posited for consideration.<sup>65</sup> If and when Mozambique does seek to embark on this popular initiative, it would be well served to learn from the imperfect experiences of other countries, including neighboring Tanzania.<sup>66</sup>

In Mozambique, some subsidized agricultural lending facilities have been created to target smallholders through cooperatives and associations that on-lend in the form of inputs, rather than cash. Commercial banks report poor experiences and high defaults with this type of lending, as well as that targeted at emerging farmers (10 ha or more), and they are collecting big payouts from guarantors of these facilities. Even where there have been efforts to heavily subsidize agricultural credit, commercial banks, development finance institutions, and donor projects alike have found it difficult to find investment-worthy applications presenting proper accounting and business practices/plans.

**Gender and credit.** The credit experience of women in Mozambique's agriculture sector is one that merits extensive study in its own right. There is no doubt that lending and borrowing takes place among female producers, traders, and even home-based processors throughout the country. The value of these transactions is typically low – even negligible, from the perspective of formal lending institutions – and credit-based transactions are significantly based on bartering, family or in-kind relationships, or casual, tight-knit lending circles that are difficult to detect and measure. In the area of micro-credit, women have proven to be, as they are all over the world, reliable borrowers, and the model of group lending – where groups, rather than individuals, are held responsible for repayment – is one that has been successfully engaged, if at a very small scale.

What is missing in Mozambique is the ability to track women's grass-roots credit experiences to provide critical data that would feed into the viability of lending at the next level – the very type of information (value of the loan; repayment history; etc.) that a credit registry ought to capture. Mozambique's single, centrally run credit bureau only serves the country's very few, higher-value lending relationships and ultimately neglects the 80% of the country's women who work in the agriculture sector. Thus, the key recommendation here that Mozambique allow the development of private credit registries is one that, in the long-term, could genuinely serve the country's women, who are now almost entirely overlooked by the national regime for lending and borrowing.

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65. See USAID/AMAP, Mozambique Rural Finances Study (2004) at 9-10.

66. Baregu, Mwombeki and Johannes Hoogeveen, "State and Markets in Cashew Marketing: What Works Better for Tanzanian Farmers," World Bank Group (October 28, 2009).

## 4.6 RECOMMENDATIONS

### **REVISIT USAID’S 2007 REPORT ON FINANCIAL SERVICES AND IDENTIFY WHERE RECOMMENDED REFORMS HAVE (OR HAVE NOT) BEEN UNDERTAKEN, AND WHY**

This chapter is far less comprehensive than the report entitled “Financial Sector Constraints to Private Sector Development in Mozambique,” sponsored by USAID and published in June 2007, which offered more than 60 recommendations for consideration by CTA members, the government, the Bank of Mozambique and international partners involved in financial sector reform or private sector development. That report is worth recognizing as a critical policy benchmark. In general, it seems that little has changed during the period since it was issued – if anything, the experience of the District Development Funds has only undermined public attitudes and expectations about credit, particularly in the rural areas. On the other hand, within the report’s many details, there are areas that have changed for the better – among them, the vast crowding out of commercial lending opportunities due to government borrowing that was the norm in 2007 has diminished. Indeed, experiences in financial reform over this four-year period are very much worth understanding better. A matrix of the 2007 recommendations and the status of the suggestion today, though beyond the scope of this diagnostic, would be a useful tool for understanding motivation and opportunity and targeting future financial sector reforms. Although the report does not significantly address the presence of DCAs and other donor guarantee programs, these also should be reviewed for their transparency and effectiveness in the overall environment for getting credit in the agriculture sector.

### **SUPPORT THE ENACTMENT OF A MODERN SECURED TRANSACTIONS LAW TO PROVIDE QUICK, INEXPENSIVE, AND SIMPLE CREATION OF A PROPRIETARY SECURITY RIGHT**

Surprisingly, despite its many excellent suggestions, the June 2007 USAID report does not emphasize the importance of secured lending and credit reporting, two issues that have long been at the top of the *Doing Business* reform agenda. Consultations with banks and other lenders during this diagnostic confirm that these issues are extremely important and that Mozambique can hardly hope to join the relative vibrancy of its neighbors to the west without them. Today, Mozambique’s banking laws have little to say about both “secured transactions” and, more generally, “collateral.” Although farmers and farmers’ organizations with significant “movable” collateral – such as farm equipment, livestock, and prospective crop yields – may use these assets to secure a loan, they are afforded very little value as collateral – as little as half or a third of what they are worth.

A new secured transactions regime is urgently needed. Based on best practices in Africa and beyond, a new law should specifically enable a web-based pledge registry. Such a registry would allow banks to search for existing liens in a matter of seconds. Lenders could register their security interests online, rather than through cumbersome manual processes. A web-based pledge registry could save time and reduce transaction costs for every secured loan.

Throughout the world, USAID has considerable experience in building consensus among both public and private actors to pass a secured transactions law *and* in implementing such laws. The process will necessarily include legal drafting that takes into account Mozambique’s other major lending legislation and informing and educating affected constituencies about the opportunities and responsibilities such a system represents. Lessons learned from past USAID-

supported efforts can be applied to Mozambique, resulting in far greater opportunities for banks to accept with confidence moveable collateral to secure credit they give to borrowers.

## **ESTABLISH AND BUILD CAPACITY OF PRIVATE CREDIT BUREAUS**

To achieve the goals of meaningful and broad-based credit information-reporting, all stakeholders in Mozambique must first work toward an efficient acceptance of a credit reference bureau data model and implementation of a data collection mechanism among banks and other financial organizations. The legal and regulatory changes necessary to allow for unfettered sharing of positive and negative credit information across financial and non-financial institutions should be put in place. As noted, new laws should certainly provide for the tracking of credit experiences at all levels, including those among the country's women that may be considered almost negligible in value, but in fact provide crucial information about potential borrowers' capacity to honor contractual obligations and repay their loans. In addition, consumer protection concerns must be accounted for in such legal changes.

Then, an advocacy program focusing on the importance of credit information for society should be designed and implemented. Such a program should be prepared and executed through a cooperative effort between the government and major private-sector organizations, including agriculture-related institutions. In addition, a capacity-building program for banks and other lenders on the implementation and use of credit information should be designed and implemented. The program should cover:

- Mechanisms for incorporating credit information and credit scoring into the underwriting process
- Implications for portfolio risk management with greater information about customer risk
- Product development and customer acquisition strategy given reduced risk
- Technology capabilities for integrated systems

The value of data as an instructive force for future lending based on greater lender confidence and reduced risk cannot be understated. The trend throughout the region and the world in favor of credit reporting – along with the correlation between credit reporting, risk, and interest rates – should be integrated into Mozambique's financial sector, so that credit can finally be seized as an instrument of long-term economic growth.

## **TACKLE THE INTEREST-RATE PROBLEM THROUGH CONCENTRATED EFFORTS AT RISK REDUCTION, INCREASED INSURANCE OPPORTUNITIES, AND CHANGES IN LENDER INCENTIVES**

In Mozambique, the current interest rate for farmers who borrow money from banks usually exceeds 22%, with most terms of lending lasting not more than one year. This fact is significantly attributable to risk: the rates represent a rationale response on the part of institutional lenders who lack confidence that the borrowers are always committed to repayment. The absence of insurance products for agricultural lenders also drives up this rate. Moreover, it is commonly acknowledged that the interest rates associated with T-bills, particularly in light of the fact that they are tax-free, mean that banks have little incentive to lend. Rather, by purchasing government bonds, they can achieve such satisfactory returns without the risk of borrower default or the high transaction costs involved in agriculture lending. Through outreach



and consensus-building, stakeholders can help affected constituencies – banks, government actors, small and medium-sized businesses, chambers of commerce, and so forth – better understand the constraints on the economy brought about by the status quo and work toward change that would result in a more rational system for interest rates and borrowing.

## PROMOTE MOBILE FINANCE INTEROPERABILITY

Across Africa, the entry of mobile telecommunications firms into traditional financial services, such as money transfers, is transforming commerce. In Kenya, for example, the M-PESA system has experienced customer uptake of millions in only a few years. Banks, savings houses and microfinance institutions there have integrated mobile services into their business models. Some are simply trying to allow M-PESA account holders to pay loans or make savings deposits. Retail businesses are seeking opportunities to allow payment for goods using these services. No longer do such businesses have to be concerned with bounced checks or the security issues associated with carrying large amounts of funds. The private sector, particularly that operating in rural areas, is clearly better off with these and competing innovations.

To build and strengthen similar systems in Mozambique, capacity-building in telecoms, financial institutions, and retail businesses could be accomplished via consumer surveys and regional workshops. Capacity-building could disseminate best practices on products, business models, and internal risk-management. The goal would be to expand access to financial services in Mozambique's agriculture sector using available technology at limited risk. To achieve these goals, donors can facilitate a joint effort between government agencies and the private sector.

## IMPROVE ENFORCEMENT OF AGRICULTURAL CONTRACTS

Enforcement of agricultural contracts remains a major problem in Mozambique. Primarily, there is little faith that small farmers in particular will honor their contracts, both as sellers of goods at previously negotiated prices and as borrowers of money from banks and other credit providers. Buyers of agricultural products are routinely frustrated by the practice of creating contracts for delivery of goods that are completely ignored at the time of sale (when the farmer finds a better price). Similarly, lenders have found that smaller farmers are not accustomed to having to pay back the money they are lent; that they treat many loans as grants, particularly those that come from the state; and that they often do not use loan money for the purpose for which it is dispersed, thus making it impossible to pay back money when it is owed. Banks in particular believe that courts are too slow to enforce the obligations of defaulting borrowers or, when pressed to enforce the contract, will sympathize with borrowers.

The implications of this problem of agricultural contracts on access to agricultural credit are grave. Financial institutions will avoid risks if they feel they will have to depend on the courts for resolution. Moreover, funds caught up in legal disputes cannot be repurposed within the financial system to more efficient uses.

Strengthened enforcement of contracts in Mozambique is urgently needed. Examples of how to improve the efficiency of contract enforcement include the following:

- **In any program that supports farmers' organizations, include a component that underscores the usefulness of contracts and obligations associated with entering into contracts.** Most farmers in Mozambique are quite poor and in many cases poorly educated. The more this is the case, the greater the possibility that they will behave

opportunistically, even where they have signed a contract. (Alternatively, they may fall prey to predatory contracts on the part of commercial enterprises). That is, a farmer or farmers' organization that grows corn, rice, palm oil, tomatoes, or other local products may agree with a corporate buyer at the beginning of the season to sell goods at a certain price. These farmers and farmers' organizations may even accept seed, pesticide, other inputs, and expertise about best farming practices as part of the arrangement to sell to a certain buyer. But even the most carefully negotiated contract may be disregarded if another buyer arrives with a higher price than the contract price at the time of harvest. In short, farmers need more information about the benefits and implications about entering into contracts.

- **Computerize court records.** Of all the programs whose implementation would quickly increase judicial efficiency and performance, this is the most obvious and pressing. USAID has a long record in assisting judiciaries, including civil, commercial and criminal courts, in strengthening their use of technology. In considering possible interventions in Kenya, lessons from Egypt, Indonesia, Bosnia, Russia, and other countries should be considered.
- **Introduce small-scale arbitration programs in rural areas,** so that disputes over agricultural contracts can be quickly resolved and enforced. Train local business people in arbitration.
- **Address corruption in the courts.** Anecdotal reports about “speed money” and other corrupt acts involving litigants and court staff, including judges, are plentiful and discouraging. To address the perception and reality of corruption in the nation's courts, the leadership of Mozambique's court system should take action. One example to follow is that of the Ghanaian court system, where determined leadership from the “very top” has resulted in meaningful changes and significantly diminished reports of corruption, as detailed in the Enforcing Contracts chapter of the 2008 USAID/AgCLIR Ghana report.

## **ENACT A NEW BANKRUPTCY LAW AND TAKE STEPS TOWARD ITS EFFECTIVE IMPLEMENTATION**

In November 2007, a new bankruptcy law was presented to the government by a group of consultants hired to draft additional legislation on closing a business. As detailed in this report's chapter on Closing a Business, this draft law is modeled on a 2005 Brazilian law. Despite four years on the legislative agenda, it has not yet been addressed. Enactment of the new law will represent an important step toward the reduction of risk in the lending environment. With certainty that they have important rights upon the dissolution of a business, banks are more likely to lend. The June 2011 USAID/SPEED report on the draft insolvency law includes a variety of recommendations for draft revision and enactment, followed by a proposed plan for robust implementation. These recommendations should be integrated into future government and donor plans for the new bankruptcy regime.





# 5. PAYING TAXES

## 5.1 INTRODUCTION

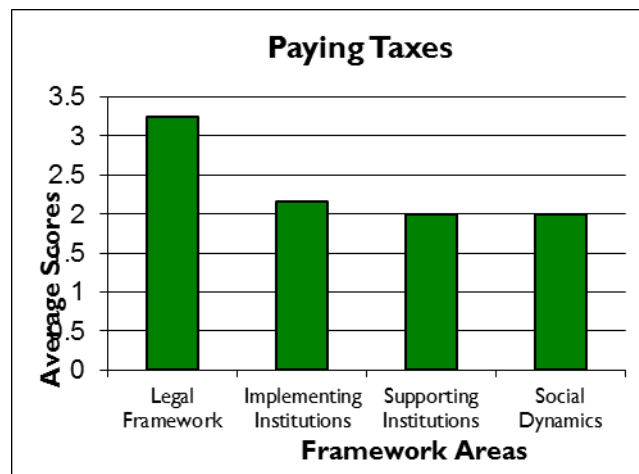
Since 1998, Mozambique's primary tax instruments have been substantially transformed. As a result, tax revenues increased from 14% of GDP in 2005 to 16.6% by 2010. Other achievements include the enactment of a new General Tax Law clarifying rules for tax collection and taxpayer rights; rationalization of fiscal benefits, in particular ending the special regime for large projects; a new Municipal Finance Act; reduction of the burden on small business by increasing tax thresholds and enacting a Simplified Tax for Small Contributors (ISPC); and a strengthened tax regime for the mining and petroleum

sectors. Several additional reforms, however, are still underway. These include integrating tax and customs information systems; tax collection via banks; improving audit revenues relative to total revenue; modernizing tax administration; and implementing tax courts.

In its most recent *Doing Business* survey, the World Bank ranks Mozambique 101<sup>st</sup> overall for Paying Taxes, down from 98 the previous year. The score consists of three components, which have equal weight: the number of tax payments; the hours spent in preparation and payment of taxes; and a computation of the total tax rate as a percentage of profits for the representative business.

In *Doing Business* 2011, the World Bank team estimates that the standardized case-study business would require 230 hours of work to prepare and submit taxes in Mozambique involving 37 payments, and face a total tax equaling 34.3% of the assumed profit margin. Over the past three years these tax scores have not improved for Mozambique. The most important action to result in a significant increase in rankings would be to introduce electronic declarations and payments for VAT, corporate income tax, and social insurance contributions for workers.<sup>67</sup>

Mozambique's Strategy for the Improvement of Business Environment<sup>68</sup> recognises that the fiscal burden in the country is high, compared to other countries in the region. It also notes the perception that fiscal legislation is not designed with SMEs in mind, and further work is necessary to accelerate the reimbursement of VAT to businesses. In 2009, some legislation was approved to implement the Strategy for the Improvement of Business Environment.



67. As stated in "PARPA II Review – Tax System in Mozambique (Nathan – USAID – 2009)," given the methodology used by the World Bank, automating these tax payments would reduce the number of payments for these three taxes from 31 to 3.

68. Carrilho Joao, Existing Sectoral Policies, Strategies and Studies on Agriculture and Agribusiness in Mozambique, DRAFT Strategy Paper for USAID AgriFUTURO .

The relatively large size and underdeveloped nature of the agricultural sector in Mozambique makes taxation of non-agricultural commodities the only viable means of raising tax revenue. Tariffs structures, in particular, tend to be skewed toward taxation on non-agricultural imports.<sup>69</sup>

Mozambique is characterized by a combination of (i) a comparatively high corporate tax rate and (ii) non-integration of corporate and personnel income tax systems. The associated double tax of equity income creates an incentive for lending rather than equity investment and raises the required rate of return on the latter. Given the high levels of real interest rates on domestic loans, this translates to a high cost of capital and consequently under investment by domestic entrepreneurs. Removing the fiscal bias requires that either dividend payments be made from pre-tax profits, thus conferring dividends the same treatment as interest, or that dividend income be exempted from taxable income.<sup>70</sup>

Under the AgCLIR scoring mechanism, Mozambique's Legal Framework scores in the “more positive features than negative” range, while Implementing Institutions, Supporting Institutions, and Social Dynamics all score in a range that indicates need for significant improvement.

## 5.2 LEGAL FRAMEWORK

The current tax system in Mozambique conforms broadly to international standards for good practice in developing countries, with the main sources of revenue coming from value added tax and modern corporate and individual income taxes (IRPC and IRPS, respectively), and taxes on trade declining in importance.<sup>71</sup>

<b>Paying Taxes in Mozambique: Recent history</b>	<b>Doing business 2009</b>	<b>Doing business 2010</b>	<b>Doing business 2011</b>
Rank	-	98	101
Total tax rate (%profit)	34.3	34.3	34.3
Payment (number per year)	37	37	37
Time (hours per year)	230	230	230

A series of reforms to the tax code and measures to improve tax administration were undertaken during the period 2006 to 2009. By and large, the reforms have aligned well with the Poverty Reduction Strategy and Program (PARPA II) objectives and targets for tax policy.

The major changes in the Tax Law, 2006–2009, are summarized in the table on the following page.

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69. FIAS and The World Bank, Mozambique: Study of the impact of Tax and Licenses on Five Priority Sectors (2008).

70. Fiscal Policy and Tax Incidence, Taxation and the Cost of Capital in Mozambique, Discussion Paper nr. 39 E, Chapter 15, (April 2007).

71. The IMF states that “The legal framework for the tax system is modern, comprehensive, and generally broadly disseminated.” Carrilho Joao, “Existing Sectoral Policies, Strategies and Studies on Agriculture and Agribusiness in Mozambique,” supra note 65, at 78.

Legal Instrument	Title and Description
Law 1/2006 of 22 March and Decree 29/2006 of 30 April	Tax Authority of Mozambique – Organic statute for establishment of the AT.
Law 2/2006 of 22 March	General Law on Taxation – General principles and provisions regulating responsibilities and obligations of the tax authorities at all levels and taxpayer rights and responsibilities.
Law 3/2007 of 7 February	Customs Law – Reduces the duty rate on consumer goods from 25% to 20%
Laws 11/2007, 12/2007, 13/2007 of 27 June and Decrees 4/2008 and 5/2008 of 9 April	Mining and Petroleum Laws – Reform the tax regime and surface concessions for mining and oil production activities, and the incentives regime for investment projects falling under the Mining Law and the Petroleum Law.
Law 28/2007 of 4 December	Inheritance and Gift Tax Code
Law 32/2007 of 31 December and Decree 7/2008 of 16 April	Value Added Tax Code (IVA) – Consolidates amendments and other legal changes relating to the VAT code; raises the threshold for registration and expands the scope of the simplified tax scheme; revises the list of exempt goods and transactions.
Law 33/2007 of 31 December and Decree 8/2008 of 16 April	Personal Income Tax Code (IRPS) – Consolidate amendments and other legal changes relating to the VAT code, and adjusts tax bracket thresholds and family allowances, also introduces tax on income from traded securities and term deposits.
Law 34/2007 of 31 December and Decree 9/2008 of 16 April	Corporate Income Tax Code (IRPC) – Consolidates amendments and other legal changes relating to the VAT code, and raises the threshold for paying tax.
Law 1/2008 of 16 January and Decree 63/2008 of 30 December	Municipal Finance Law – Defines the financial budgetary and asset regimes for local governments, and reforms the municipal tax system.
Law 4/2009 of 12 January	Code of Fiscal Benefits (CBF) – reforms the available package of fiscal benefits for investments approved under the Investment Act, including both generic benefits and specific benefits for designated types of projects.
Law 5/2009 of 12 January and decree 14/2009 of 14 April	Simplified tax for small taxpayers (ISPC) – Introduces a new simplified tax system for small enterprises, replacing simplified tax regimes for both income tax and VAT. Taxpayers whose turnover is equivalent to 36 minimum wages are exempted. 50% tax reduction for the first year.
EITI Board Approval of candidacy for Mozambique, 18 May 2009	This measure begins the formal process of qualifying Mozambique for participation in and adherence to the Extractive Industries Transparency Initiative.
Law 17/2009 of 10 September and decree 69/2009 of 11 December	Excise Tax Code (ICE) – Restructures the excise tax rates on certain goods including wines, tobacco products, jewelry, and vehicles, eliminates excise tax on some toys and sporting goods.



Taxes in Mozambique at both the central government and municipality level are ruled by two general laws (Law 2/2006, March 22<sup>nd</sup> and Law 15/2002, June 26<sup>th</sup>). Municipalities are allowed to levy their own taxes and are also entitled to receive public funding from the state budget (around 1% of total national budget). Below is an overview of the different types of taxes imposed in Mozambique.

**Corporate taxation.** In Mozambique, as in many other countries, a company's residency determines its rate of taxation. A company is considered a resident company if its head office or place of effective management or control is in Mozambique, or if the business is registered in Mozambique. A resident company is taxed on its worldwide income, while a non-resident company is subject to tax only on its Mozambique source income.

#### KEY LAWS

- Corporate Income Tax Code
- Personal Income Tax Code
- Value Added Tax Code
- Fiscal Benefits Code

Dividends from companies are subject to a 20% withholding tax unless they qualify for the participation exemption. Foreign-source dividends are taxable at the full company rate. Capital gains or losses are included in ordinary income taxed at the company rate. An inflation allowance is available (which has to be determined on a case-by-case basis, since the inflation coefficients have not been set by the tax authorities). An alternative minimum tax exists in Mozambique and applies to very small entities (turnover less than USD 85,000).

Companies pay no capital duty tax or payroll tax. Real property tax is calculated at up to 0.4% (for a residence) and 0.7% (for offices) of the value of property in Maputo and Matola. Companies are charged a stamp duty at 0.4%, which applies to share transfers, and 0.2% to transfers of buildings. Land transfers (which are always leaseholds) are exempt from a stamp duty. A transfer tax of 2%, normally paid by the transferee, is charged on the transfer of title to a building. The rate is 10% when the buyer is resident in a jurisdiction with a more beneficial tax regime.

Incentives, including VAT exemption, tax credits, and the reduction or exemption of corporate tax, are available under the New Fiscal Benefits Code (Law 4/2009 of 12 January). The revised Code also includes benefits to promote the introduction of new technology and professional training. Entitlement to these benefits is granted to investments under the Investment Law or those in commercial and industrial activities carried out in rural areas. Companies that invest in Rapid Development Zones and Industrial Free Zones (Zambezi Valley<sup>72</sup>, Niassa Province, Nacala District, Mozambique Island and Ibo Island), in agriculture, mining, oil, tourism and industrial and services projects also may benefit from incentives that vary by location, the number of employees, and whether the products are exported.

**Administration and compliance.** The Mozambican fiscal year runs from January through December, although a company may adopt any accounting date, if so authorized. While consolidated tax returns are not required; each company in a group must file a separate return. Companies must make three provisional corporate tax payments in May, July, and September. The total amount should be 80% of the amount of the tax assessed for the previous year.

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72. The Zambezi Valley is defined as the geographical area that includes all of the districts in the province of Tete, the districts of Morrumbala, Mopeia, Chinde, Milange, Mocuba, Maganja da Costa, Nicoadala, Inhassunge, Namacurra and Quelimane in the province of Zambezia; the districts of Gorongosa, Maringue, Chemba, Caia, Marromeu, Cheringoma and Muanza in the province of Sofala; the districts of Barue, Guro, Tambara and Macossa in the provinces of Manica.

Annual tax returns and the balance of tax due must be submitted by 31 May, with supporting documents filed a month later. There are penalties for late filing, nonpayment of tax, and failure to disclose records. Penalties range from approximately USD 100 to USD 33,000. Interest is charged on late payments. Prison terms for tax fraud may be up to eight years, or up to two years for negligence. General rulings on the interpretation of the tax law, or advance rulings on the taxation of specific transactions may be obtained from the tax authorities. Such rulings are binding on the authorities with respect to the disclosed facts of the transaction.

**Value-Added Tax.** In Mozambique, VAT is chargeable on the supply of goods and services and on imports. The standard rate is 17%. Banking and certain health, education, and philanthropic services are exempt, and exports of goods and services are exempt. Form 1 is used to obtain a Unique Tax Number and Form 6 as a declaration of initiation of activities. The monthly VAT must be filed by the last day of the following month.

**Tax treaties.** Mozambique has double-tax treaties in order to avoid double taxation with the following countries: Italy, Mauritius, Portugal, South Africa, UAE and Macau.

**Taxation in agriculture.** In general terms, the issue of taxation is not seen as one hindering the growth of the Mozambican agricultural sector.<sup>73</sup> Some of the tax benefits in agriculture include:

- IRPC is effectively 2% (80% of 10% until 2010) for those who benefit from the Fiscal Benefits Code;
- The majority of inputs and outputs are VAT exempt or zero rated (although VAT remains on some inputs, notably fuel and electricity). In addition, large scale investments have been able to negotiate tax arrangements, for example in the Zambezi River Valley;
- One of the largest tax burdens commercial agriculture routinely encounters is on fuel (import duty at 5%, VAT at 17% and the levy on fuel), although this is an input tax and not a tax on capital;
- Certain crops also have industry specific tax regimes, such as the 18% export tax on unprocessed cashew nuts and the variable import levy on sugar;
- Import duties are low for agriculture inputs, varying from 0% (recycled seed) to 2.5% (fertilizers, herbicide and insecticides);
- Local taxes such as VAT are not applied for recycled seed, fertilizer, insecticide, or herbicide. The combination of a low or no import duty with no additional taxes results in a fairly small share of the final shipment value (SV) for these inputs. On the other hand, import duties for equipment including transport and office equipment imported for use in the agricultural sector are higher than import duties on agricultural inputs, reaching 25% in some cases.
- Under the Mozambican Law, land belongs to the State and may not be sold, mortgaged, and pledged. The maximum length of a land concession is 50 years, renewable for an additional 50 years. The cost of land use rights are as follows: livestock – 0.16 US\$/ha/year; agriculture – 1.17 US\$/ha/year; other purpose – 2.35 US\$/ha/year; concession fees: provisional approval – US\$ 47; definitive approval – US\$ 23.

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73. FIAS and World Bank, Mozambique: Study of the impact of Tax and Licenses on Five Priority Sectors” (July 2006).

**Investment undertakings in agriculture**, which are authorized in accordance with the Investment Law and Regulations shall benefit: (i) from an exemption from payment of imports duties on equipment included in Class “K” of the Customs Tariff Schedule; (ii) until the year 2012, from an 80% reduction in the tax rate applicable to profits from agricultural ventures.

## 5.3 IMPLEMENTING INSTITUTIONS

**Ministry of Finance (MF).** The Ministry of Finance currently serves one million registered taxpayers and 50,000 businesses. The MF launched a project to modernize the government tax collection process as part of its e-governance initiative, which will also include implementation of government resource planning and customer relationship management (CRM) systems.<sup>74</sup> The fiscal management responsibility is clearly defined and coordinated by the Ministry of Finance.

### KEY IMPLEMENTING INSTITUTIONS

- Ministry of Finance
- The Mozambique Revenue Authority
- Ministry of Planning and Development
- Ministry of Industry and Trade
- Central Bank

**The Mozambique Revenue Authority (AT),** was established by Law 1/2006, March 22<sup>nd</sup>. Additional laws, (Decree 29/006, August 30<sup>th</sup>) and (Decree 30/2006) both approve the organization and staffing of this government body. The AT is the government's cornerstone in its efforts in reducing budgetary deficit as well as ensuring the country's sustainable social and economic development. It comprises the following governance bodies:

#### At the central level:

- High Tax Council
- President
- Board of Directors
- General Directorate of Customs
- General Directorate of Internal Taxes
- General Directorate for Common Services
- Office for Planning, Studies and International Cooperation
- Office for Internal Control

#### At the local level:

- Regional Directorates (South, Center and North)
- Provincial Directorates

The Directorates of the Fiscal Area represent the principal connections of taxpayers to the tax administration where the compliance with respective obligations take place (declarative and others). AT has a total staff of about 3,214 workers. AT has 25 fiscal areas directorates, three large taxpayer units, two private judges for fiscal execution, 55 fiscal and collection points, and 35 border posts in operation. To facilitate operations, AT has planned to add 46 new border posts and 27 collection points.

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74. Around 23 million people live in Mozambique, many of whom consider it their duty to pay taxes, even though some have to walk up to 100 kilometers to the nearest office. Oracle Enterprise Taxation Management was selected to replace an inflexible paper-based taxpayer registration process.

The AT coordinates tax activities with the following institutions:

- **Ministry of Finance.** Ministry of Finance liaises with the AT on issues related to fiscal and budgetary policy and government budget, setting of the state budget, conveying of funds to the treasury, and preparation of the general state account.
- **Ministry of Industry and Commerce.** The MIC is involved in the Government International Trade Policy, specifically the regional integration process and international partnership agreements, including the WTO.
- **Ministry of Planning and Development.** MPD sets up the mid-term fiscal scenario (CFMP), develops the budget and comes up with macroeconomic indicators.
- **Central Bank.** BM sets the country's monetary policy, FOREX rate; and controls inflation.

The establishment of AT provides the basis for achieving major gains in efficiency through the integration of common operations. To date, however, the integration of customs and domestic tax services has been limited, largely involving back office functions. Greater efficiencies can be generated through the integration of revenue operations such as audit, debt management, risk management, and refund processing, as well as support functions such as human resource management, taxpayer database pooling, IT systems development, and customer services.<sup>75</sup>

## 5.4 SUPPORTING INSTITUTIONS

### **Confederation of Mozambican Business (CTA).**

Detailed in this chapter's report on Dealing with Licenses, CTA is an umbrella organization of 68 business associations, chambers of commerce, and commercial federations, covering all sectors in the country. CTA is viewed by some of the interviewees as an organization with strong linkages with the government.

#### KEY SUPPORTING INSTITUTIONS

- CTA
- CEPAGRI
- IMPME
- Auditing and accounting firms
- Media

**Agricultural Investments Promotion Center (CEPAGRI).** This quasi-independent division of the Ministry of Agriculture is charged with promoting investment into the agriculture sector. Its management has a strong understanding of the opportunities within Mozambique, but its work is generally centralized (with few of its promotion activities reaching the rural regions) and lacking in resources. CEPAGRI is experienced in value chain development and is currently involved in developing an Agricultural Credit Program aimed at engaging participating financing institutions such as Banco Terra. It also is substantially involved in helping investors identify land tracts that may be suitable for their projects.

The Institute for the Promotion of Micro, Small, and Medium Enterprises (IMPME) aims to increase production, industrial processing, investment and employment by management and technical assistance; business information; loan guarantee support; and business environment.

**Auditing and accounting firms.** Most taxpayers are not large business with highly skilled accountants. In large parts of the country, it is literally impossible for a medium-sized business to submit properly certified accounts for tax purposes, due to the absence of accounting services and high costs associated with such services. Larger operations based in Maputo can

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75. USAID/Nathan Associates, PARPA II Review – Tax System in Mozambique (2009).

rely on the professional services for tax support from the available consulting firms (Ernest & Young, KPMG, Deloitte and Touche, Pricewaterhouse Coopers, etc.).

**Media.** AT has been working to address the lack of a “taxpaying culture” in Mozambique through a public information campaign highlighting the role of taxation in financing public services, and the obligation of citizens to contribute to national development. This message is being diffused through the following mechanisms:

- **Television.** Government-owned Televisao de Mocambique (TVM) offers coverage in provincial capitals and Maputo. STV also has a large coverage. In addition, the foreign-based Radio Televisao Portugal Africa (RTP) and Miramar accept local advertising.
- **Radio.** Radio is the most effective information channel in the country. The only radio station with national coverage is the government-owned Radio Mocambique. The second most popular Maputo station is Radio Terra Verde. There are many local radio stations in the country. Portuguese radio (RDP) also operates countrywide.
- **Newspaper.** Major newspaper include “Noticias” (daily), “O Pais” (daily), “Diario de Mocambique (daily), “Domingo” (weekly), “Savana” (weekly) and “Zambezi” (weekly).

The AT also developed a website to provide ready access to any business or citizens with Internet connections.

## 5.5 SOCIAL DYNAMICS

Business leaders in Mozambique contend that the recent tax reform program is impeding development of the private sector.<sup>76</sup> For those interviewed during this AgCLIR exercise, the main concerns include:

- The new tax laws are too complex for local conditions. However VAT in Mozambique is very similar to VAT in 10 SADC states.
- Average taxpayers face difficulties in completing forms accurately and maintaining necessary documentation.
- The VAT refund process is viewed as suffering from a lack of transparency. There is a sharp divergence between private sector claims of long VAT refund delays and statements by government officials who claim that processing times are within the mandated 45-day period.
- Much criticism is targeted at the degree of discretion exercised by tax officials in determining assessments and penalties.
- The tax system unduly impairs business cash flow and raises financing costs – the most prominent example is the cost of financing delays in obtaining VAT refunds. These cash flow problems could be mitigated if the government would honor its statutory commitment to pay interest on overdue refunds.
- The new ISPC should go a long way toward mitigating tax impediments to the development of business linkages. It is unlikely to overcome the problems altogether, given the practical difficulties of registering every family farmer, local trader, and handicraft producer – many of

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76. Bruce Bolnick, Nathan Associates; CTA, Tax Reform and Business Environment in Mozambique (2006).

whom are illiterate, and often lack even a proper identity card.

- Public information on the tax system is inadequate and public-private dialogue is insufficient – the availability of tax information and public-private dialogue is poor. Government officials should view consultations as an important mechanism for learning about problems faced by taxpayers.

The revenue collected from informal sector importations represents about 2% of total revenue collected by customs. Three main informal sector associations<sup>77</sup> dedicated to the purchase of groceries and various types of crockery for resale into the local market to small traders, have been involved in the process of preparing legal instruments necessary for the performance of their activities as well as customs and fiscal controls. The informal sector, which comprises the biggest part of the economy, has become a serious price competitor for formal sector, tax-paying traders, partly because informal traders are able to sell smuggled goods with no repercussions. Representatives of small companies in the rural areas believed they were being taxed the same as companies in Maputo without seeing the benefits in terms of supporting services, infrastructures, and so on. *“Changing the culture of taxpaying is particularly difficult if tax officials are often perceived as being predatory rather than supportive, and if public does not see corresponding benefits from government expenditures”*.<sup>78</sup>

In March 2009, the AT signed two Memorandums of Understanding with the three main informal sector associations aimed at combating and preventing fraudulent action and inspection and related to the implementation of the simplified Tax for Small taxpayers (ISPC). Representatives of informal trade associations are invited to attend the Fiscal Council sessions and related events within the AT, making them feel as part of the tax system social dynamics.

The strong weakness in the “tax culture” as a primary obstacle to improving compliance and curbing fraud and evasion was emphasized by many of those interviewed. They underlined the need of the senior members of the government and members of the national and provincial assemblies to submit income and wealth declarations to an independent audit authority and to the AT as an example of fairness.

The challenge of widespread tax exemptions must also be addressed. Most of the interviewees expressed their concerns that tax exemptions granted to the political and economic elite undermine the credibility of the tax system and may also “legitimize” tax evasion. The tax authority employers are not only revenue collectors, but also state builders. AT could in this respect become a model institution for the rest of the civil service. It is important to create a dialogue that can contribute to a wider debate on tax and development. While discussions about taxation have traditionally been a narrow and technocratic domain, there is a need to broaden the debate and to make people realize the importance of taxation for state-building and development. To this effect, tax authorities arranged seminars around the country to introduce the new tax codes. Tax authorities also participate in other intermittent discussions with the private sector including meetings with the CTA. Despite these conversations, there is still significant room for growth in terms of exchange of information.<sup>79</sup>

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77. The associations are: AVISIMO (MUKHERO) – Association of Informal Sector Operators and Workers; AMIMO – Mozambican Association of Small Scale Importers; ASSOTSI – Association of Informal Sector Operators.

78. PARPA II Review, supra note 72.

79. USAID/Nathan Associates, Tax Reform and the Business Environment in Mozambique – A Review of Private Sector Concerns (December 2004).



## TAXES AND INPUTS

Of small farmers, 82% complain that the poor or costly supply of seeds is their main agricultural problem. The prices for fertilizer and pesticides are high because of unnecessarily high cost and insurance and freight (C.I.F) costs of imported chemicals, high local transport costs, and abnormally high margins charged by some suppliers, especially when they have a regional monopoly as, for example, in the contract farming schemes. The high prices and costs for inputs reduce the viability of exports for many crops.

Among small farmers, only 2.7% use fertilizer and 4.5%, pesticides, and those who do are mostly contract farmers who use them almost exclusively for cash crops such as cotton and tobacco. The situation is slightly better for medium-scale farmers (11%, fertilizers; 10.3%, pesticides), and even among large farmers only a third use modern inputs.

Unless such inputs can be lent and repaid at harvest, most small and medium farmers are crushed by poverty and have no capital to invest in modern inputs, especially considering the risks entailed if the harvest is poor due to a drought, flood, or plague. The producers interviewed underlined the need to strengthen private-sector agricultural input systems as well as other means of ensuring access to inputs such as farmer associations, cooperatives and out-grower arrangements.

*From “Agricultural Intensification in Mozambique – Infrastructure, Policy and Institutional Framework – When Do Problems Signal Opportunities?” – Coughlin Peter, EconPolicy Research Group (September*

## 5.6 RECOMMENDATIONS

Recommendations from previous donor reports, as verified by this diagnostic, focus on 12 key issues:

- **Medium-term revenue target.** A revenue ratio of 18.5% of GDP should be achievable by 2015, with a strong commitment to further reform. Yet revenue maximization is not the sole aim of tax policy. Depending on the desired balance between revenue enhancement and tax relief for the private sector, the study suggests options ranging from 16.5% to 18.5% of GDP. The revenue target for each year's budget program should be determined from an analysis of prevailing conditions.
- **Tax rates.** Moderate tax cuts would provide the private sector with additional financial resources for expansion, innovation, and job creation. Furthermore, Mozambique should not lag too far behind the global and regional trend toward lower tax rates on company income. The study therefore recommends planning for income tax reductions as revenue prospects improve. Also recommended are a reduction in the withholding tax and elimination of double taxation on dividends disbursed to individual shareholders.
- **Capacity for tax analysis.** Decisions on tax policy should be informed by a careful analysis of the revenue effects and economic impacts. The study recommends establishing a Tax Policy Unit at the Ministry of Finance and training a group of specialists to conduct quantitative and qualitative analysis of tax policy issues.
- **Functional integration within the AT.** The Revenue Authority can greatly improve efficiency and effectiveness by further modernizing tax administration. One major requirement is functional integration of common operations between customs and tax services, including audit, risk management, debt management, and customer services, as well as human resource management and master data files for each taxpayer.
- **E-taxation.** The government and the AT recognize the importance of information technologies (*e-Tributação*) and have begun planning and implementing major reforms. Priorities include e-declarations, electronic payments through the banks, an automated

single window for border clearances, and automated debt management. These IT measures should also be a catalyst for re-engineering related business processes.

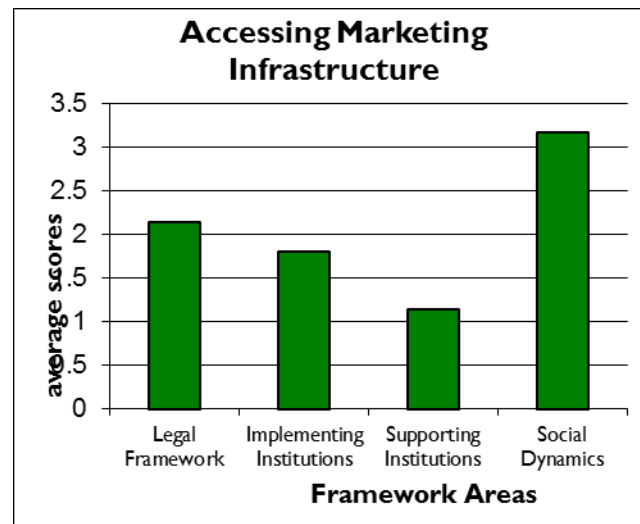
- **Risk management.** There is enormous room for improvement in collection efficiency through modern risk management, which will simultaneously reduce the compliance burden and facilitate tax transactions for most taxpayers. The concept is to use automated systems to distinguish cases with high versus low revenue risk, enabling the AT to focus resources on cases where the potential revenue gains are highest.
- **Tax simplification.** Despite genuine progress during the PARPA II period, tax simplification remains a major priority. Complexities in the tax code, in tax forms, and in administrative procedures – including those for obtaining tax refunds – continue to create serious problems, especially for small and medium size enterprises.
- **Taxpayer services.** The AT has made impressive progress in improving taxpayer services, but the process is far from complete. Better provision of information is central to any solution, including increased capacity within the AT to provide clear and prompt answers to questions from taxpayers at all levels of sophistication. Another longstanding problem is the tendency of tax officers to employ unpredictable and punitive enforcement practices, whereas educational support would be more constructive.
- **Tax culture.** Many of those interviewed for the study emphasized the weak “tax culture” as a primary obstacle to improving compliance and curbing tax fraud and tax evasion. Changing the tax culture requires a combination of carrots and sticks to strengthen incentives for compliance and increase the costs of cheating, while improving public understanding of their obligations. To hasten the cultural transformation, the AT can also pursue measures that would resonate with the public, such as cracking down on affluent taxpayers who have been escaping their tax obligations with impunity.
- **Tax training.** There is a great need for expanding and improving tax training for both AT cadres and tax professionals serving the private sector. From a revenue perspective, training in advance audit skills for dealing with large taxpayers is especially important.
- **Donor coordination.** Several donors are channeling financial support through a common fund controlled by the AT. It appears that other donors will be assisting the AT through other channels. It is important for donors to deliver assistance in a manner that minimizes the burden on the AT to cope with a multiplicity of procedures and requirements.



# 6. ACCESSING MARKETING INFRASTRUCTURE

## 6.1 INTRODUCTION

The level of economic development of any country is closely related to the condition of its physical infrastructure as they are the veins that allow the flow of people, goods and services from origin to markets. Accordingly, AgCLIR has included *access to marketing infrastructure* as one of the components it assesses within the agribusiness enabling environment of a country. Mozambique is only the second country after Zambia to have its marketing infrastructure assessed in an AgCLIR diagnostic. This section aims to assess the availability and conditions of the current marketing infrastructure in Mozambique, including plans for future investment in infrastructure and their impact on the agribusiness sector.



In a “snap-shot” review, this chapter focuses on the marketing infrastructure from farm-gate to markets. Stakeholders interviewed ranged from government officers to various representatives of the private sector (e.g. processors, exporters, semi-commercial and large commercial farmers, business services providers), civil society, and academics in four provinces of Mozambique, namely Maputo, Manica, Sofala and Nampula.

For the purpose of this diagnostic, infrastructure is defined as “*services drawn from the set of public works that traditionally has been supported by the public sector, though in many cases, the infrastructure services may be provided by the private sector.*”<sup>80</sup> In the case of marketing infrastructure we refer to roads, warehouses, ports, airports, market facilities, borders, phytosanitary services, slaughter houses, grading and packing facilities, and price information systems to mention a few.

The legal, institutional, and social aspects of the current marketing infrastructure were assessed and recommendations are made on what could be done to improve the agribusiness enabling environment to stimulate further investment on marketing infrastructure thus improving the sector’s competitiveness. Although the current results may not reflect a positive condition of the agribusiness marketing infrastructure in Mozambique, there is a lot of potential and a great deal is being done to change the situation.

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80. Venkatachalam, L., (2003).

Under the AgCLIR scoring mechanism, Social Dynamics prove to be the strongest aspect of Accessing Marketing Infrastructure, while Supporting Institutions are the weakest.

## 6.2 LEGAL FRAMEWORK

Mozambique underwent several years of war which destroyed most of the infrastructure Mozambique inherited from the colonial time. Although in peace for almost 20 years, the country has not recovered from the damaged done, and the government has been carrying the huge responsibility of investing in infrastructure as a whole to benefit all sectors. The legal framework should outline the objectives of the law and the public entity responsible for implementing it as well as how investment in public infrastructure should be pursued. This is true in the case of Mozambique, and specific laws and regulations exist around infrastructure such as roads, ports, and airports.

**Post-harvest facilities.** Mozambique is deficient in its capacity to ensure proper post-harvesting handling of fresh produce and cereals. Poor quality of locally grown fruits and vegetables is often attributed to negligible post harvest handling. There are minimal cold storage facilities across the country. The Mozambican Cereal Institute has the mandate to store cereals, but the organization is often deemed ineffective. After independence, AGRICOM, a parastatal company, was created to promote agriculture commercialization. Within the organizational structure of the Government, the Mozambican Cereal Institute is expected to regulate, monitor and conduct research. However, to date, the institute has been unable to meet these expectations. It is therefore not surprising that the National Cereals Institute is ineffective in promoting agriculture production and commercialization.<sup>81</sup>

**Product standardization and quality.** The Instituto Nacional de Normalização e Qualidade (INNOQ) was established on 24 March 1993 by Law Decree 02/93 of the Council of Ministers, under the Ministry of Industry and Energy. INNOQ is judicially and administratively an autonomous body that has been operating under the Ministry of Industry and Trade since 2000, and acts as the recognized central body responsible for defining and implementing quality policy and for coordinating all standardization and quality activities at the national level.

The main functions of INNOQ are the promotion of standardization and quality in the manufacturing of products and the performance of services; and cooperation with regional and international organizations working in the fields of standardization and quality. The aim is to improve the conditions of industry, protect consumers and the environment, increase and facilitate domestic and international trade in order to improve the standard of living and strengthen the overall economy of the country<sup>82</sup>. INNOQ is not an accredited quality authority and is undergoing the process of accreditation. This therefore limits its ability to certify local laboratories which service the private

### KEY LAWS AND INSTRUMENTS

- Law establishing INNOQ (1993)
- Law establishing National Roads Administration (1999)
- Roads Sector Strategy (2006)
- Law establishing Mozambican Ports and Railways Company (1994)
- Law on Ministry of Science and Technology (2005)

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81. Deloitte & Touche, Restructuring of the Mozambican National Institute, [www.speed-program.com/library/resources/.../cat3\\_link\\_1213198442.doc](http://www.speed-program.com/library/resources/.../cat3_link_1213198442.doc).

82. [www.iso.org](http://www.iso.org).

sector to issue quality certificates on water quality or aflatoxin testing on groundnuts and cereals.

TABLE 6: TYPES AND CLASSIFICATION OF ROADS IN MOZAMBIQUE			
Classification	Paved (Kms)	Non-paved(Kms)	Total (Kms)
Primary	4,728	1,243	5,971
Secondary	838	4,078	4,915
Terceira	667	11,936	12,603
Vicinal	54	6,513	6,567
Total Kms	6,286	23,770	30,056
Source: ANE (National Roads Administration <a href="http://www.ane.gov.mz">www.ane.gov.mz</a> )			

**Roads.** Roads are crucial for the delivery of production inputs, services, and the flow of commodities from farm to markets. Road transport is the most used transport means in Mozambique with 10% of the road network being used for goods and 90% for passenger transport (Road Sector Policy). A Roads Policy is in place which clearly defines the two core functions of the road network as first ensuring the safest movement of people and goods while promoting production-

distribution relationship and second improving the viability of regions and development projects that lack stable access to their suppliers and markets.

The National Roads Administration (ANE) is a legally recognized public institution with an administrative autonomy under the stewardship of the Ministry of Public Works and Housing. ANE was created by the Degree 15/99 April 27<sup>th</sup> approved by the Council of Ministries.

The Roads Sector Strategy (RSS) adopts a medium- to long-term approach to the development and management of the classified roads network Mozambique. RSS adds a level of detail to the government's Road Sector Policy by establishing basic principles, approaches and activities to be undertaken at the end of the GOM 10-year roads program, Roads-3. Strategic plans for investment, maintenance, and finance included in RSS were prepared for a timeframe of five years from 2007 to 2011. Strategic plans set the framework for preparing detailed work plans, which are included in the PIP from 2007 to 2009. Both the RSS and the five-year strategic plans should be reviewed within three years in preparing for Phase 3 of Roads-3.<sup>83</sup>

Mozambique has an estimated 30,000 km<sup>2</sup> of roads. The roads differ in their state, location, and use. Some factors have been developed to differentiate them and guide investment to each category of roads.

Classified roads are roads to which a class has been assigned. Below is a list of the different types of road classes/categories in use in Mozambique:

- Municipal roads are unclassified roads, subject to the jurisdiction of a municipal authority.
- Unclassified roads are all those not listed in classification system of roads, including the municipal roads.
- Primary roads are the backbone of the road network and link:
  - provincial capitals,

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83. Road Sector Strategy (2006), available at [www.ane.gov.mz](http://www.ane.gov.mz).

- provincial capitals and other cities,
- provincial capitals and major ports, and
- provincial capitals and major border crossings.



- Secondary roads are those that complement the backbone network roads and link:
  - provincial capitals to ports;
  - primary roads and the economic development regions; and
  - primary roads and other border crossings.
- Tertiary roads are those that establish the link between:
  - secondary roads to other secondary or primary roads;
  - district headquarters;
  - district headquarters and administrative posts; and
  - district headquarters and the centers of high economic importance.
- Local roads are the roads that link:
  - tertiary roads;
  - administrative posts; and
  - administrative posts and other villages.

Mozambique's rural roads are particular need of attention. In general, provincial budgets are inadequate to address unclassified roads; donor work on roads is not well coordinated; and there are insufficient weighbridges to regulate overloading and road damage.

**Ports and railways.** Ports and railways fall under the responsibility of the public company Caminhos de Ferro de Moçambique (CFM). Decree No. 40/94 of 13 September provided for the conversion of the then-parastatal Empresa Nacional de Portos e Caminhos de Ferro into the public Mozambican Ports and Railways Company (CFM). CFM falls under the jurisdiction of the Ministry of Transports and Communications.

Mozambique has six ports, all supported by railway infrastructure. Only four are operational: Maputo, Beira, Nacala, and Quelimane. All of these ports serve inland neighboring countries (South Africa, Swaziland, Malawi, Zambia, Zimbabwe) and are under concession management. The ports of Xai-Xai and Inhambane are smaller and not in operation. The CFM rail network crosses the country but is not fully operational. The table on this page provides further information about the railroad network.

**Border posts and airports.** Mozambique borders six other countries, many of which depend on access to the country's ports. Trade between those countries and Mozambique is increasing as the economies grow and the regional trade agreements are implemented. The Customs Service is responsible for the flow of goods and for ensuring that the Customs Law is followed by all users of borders and airports. The Customs Service (Alfândegas) is legislated according to Decrees 3/2000 and 4/2000 of 17<sup>th</sup> of March. In December 2002, further additions were made to the functions and obligations of the Alfândegas (Decree 3/2002). At all borders and ports, immigration, phytosanitary, and police services are also present and collaborate with the Customs Services.

Airports in Mozambique are managed by the public company, Aeroportos de Moçambique, created in November of 1980 by the decree 10/1980. The agency has the following functions:

- direct and control air traffic;
- ensure the arrival and departure of aircraft;
- create conditions for loading, unloading and transport for passengers, cargo and mail;
- plan, execute and operate the network infrastructure and maintain them; and
- enhance uptake of revenue in internal and external sources to be applied in the management, operation, maintenance, expansion and beautification of infrastructure for air navigation.

Mozambique reportedly has 22 airports with paved runways and at least 130 others with unpaved runways. International flights currently go to South Africa, Kenya, and Portugal.

**Information technology, market information, and research.** The Ministry of Science and Technology, one of the newest ministries in Mozambique, was created on February 4<sup>th</sup>, 2005 under Decree 13/2005, which concurrently eliminated the Ministry of Higher Education. Among its mandates, the new ministry is charged with the formulation of science and technology policies and strategies.

The dissemination of market-related information and prices is under the Ministry of Industry and Commerce. Nevertheless, the Ministry of Agriculture actively collects market prices and some coordination exists between the ministries in its dissemination, although more needs to be done.

The Instituto de Investigação Agrária de Moçambique (IIAM – National Agrarian Institute of Mozambique) was created on October 27<sup>th</sup> by the degree No. 4/2004, as a result of a fusion of four public entities in the Ministry of Agriculture. This institution is the chief authority in the research and dissemination of agrarian technologies.

With support from USAID, the Ministry of Agriculture established the Agricultural Markets Information System (SIMA- Sistema de Informacao de Mercados Agrícolas). More information about SIMA can be found in this chapter's discussion of Implementing Institutions.

## 6.3 IMPLEMENTING INSTITUTIONS

Mozambique is a country rich in legislation. The quality and number of its laws and regulations is perceived as relatively high; however, the country's capacity to implement them is considered quite poor. There is lack of financial, human, material, and technological capacity within the public sector to address the increasing needs of the country and to respond to the demands of the private sector.

### **General oversight: production vs. processing.**

When it comes to agriculture, there is a clear distinction in the roles of the Ministry of Agriculture (MINAG) and the Ministry of Industry and Commerce (MIC). Agricultural production is the sole responsibility of the Ministry of Agriculture,

### **KEY IMPLEMENTING INSTITUTIONS**

- Ministry of Agriculture
- Ministry of Industry and Commerce
- Mozambican Cereals Institute
- National Roads Administration
- Caminhos de Ferro de Moçambique (rail and ports authority)
- Border posts and airports (customs authority)
- Information System for Agricultural Markets

while the Ministry of Industry and Commerce is responsible for the commercialization of the goods produced within the national territory. At the provincial level, the Directorates of MIC act as market linkage facilitators, enabling farmers to access markets to sell fresh produce, groundnuts, and cereals. Those products are often sold to retailers and traders such as Shoprite and DECA.

Market price information is collected by both the MINAG and MIC and posted at the district Economic Activities Departments. It is also disseminated in the rural radio stations. The officer at the Economic Activities Department at the district level is an extension worker charged with representing both ministries (MIC and MINAG). The national extension service is weak, with just 739 officers available to service the rural sector and very few resources to support them in doing so.

**Management of post-harvest facilities.** The Mozambican Cereals Institute (ICM), whose mandate is to purchase cereals from producers in the production area, possesses 498 warehouses with a total grain storage capacity of nearly 200,000 MT, concentrated in the areas with the greatest agro-ecological potential (the center and north). Unfortunately, ICM lacks the financial capacity to accomplish its mandate. Today, some of its warehouses are rented to private sector companies which utilize them for other activities beyond storage of agriculture commodities.

The lack of storage facilities in the rural areas undermines food security in Mozambique. Due to immediate financial needs, farmers often sell all their harvest. They later become food-insecure and are forced to buy back their maize or maize meal at a higher price, often beyond their financial capacity. To address this issue, MIC works closely with ICM to ensure that its warehouses are rented to agriculture commercialization operators and that at least 10% of the cereals stored are purchased by ICM. The aim is to keep the grain for later in the season and to enable farmers to buy it back at reasonable prices. In addition, there are plans to increase storage capacity by building silos at district levels. For example, in Manica Province, MIC plans to build silos in Bàsrué, Sunssundenga, Mussurize, and Chimoio between 2011 and 2013, with at least five silos slated for construction in 2011. Bàrué will also have a warehouse.

Furthermore, post-harvest facilities are gravely lacking with respect to commercialized produce and other goods. For example, a good deal of produce – up to one-third or even one-half – is lost through Mozambique's wholesale food distribution system. Like many developing countries, Mozambique's markets lack sufficient sanitation and storage facilities to preserve the quality of goods for sale. Markets are often over-crowded, unsanitary, and lacking in sufficient facilities to load, unload, ripen, package, and temporarily store product. The weakness of marketing cooperatives is evident in these establishments; among many traders, there are few institutions in place that help their members extend the life the value of their products through such collective investments as cooling facilities or other preservation-oriented concepts.

**Oversight of roads.** The National Roads Administration (ANE) is Mozambique's authority over roads management. Its vision is to ensure that road connectivity and road traffic of people and goods take place in the safest and most economical way possible and contribute to the sustainable socio-economic and cultural development of the country.

For classified roads, ANE is charged with the following:

- design, build, and maintain classified roads;
- select, in accordance with the law, firms to provide road-related services, goods and works;
- engage and manage contracts and concession roads and works, noting the legislation and legal proceedings; and

- engage and manage contracts for services, projects, and monitoring, observing the laws and legal procedures in force.

For unclassified roads, ANE is charged with proposing rules to be observed by:

- local authorities in development and maintenance of urban roads; and
- local government institutions in the rehabilitation and maintenance of their roads.

At the provincial level, ANE is represented by its delegations. A provincial committee, consisting of political, civil society, and technical stakeholders, meets annually to jointly address several crucial issues including the roads of the province. In the case of roads, the provincial representation of ANE (DPE) receives its operations budget for the maintenance of classified roads. However, many unclassified roads are crucial for the movement of people and goods from the most remote areas to the towns. The provincial committee will identify the roads which should be fixed or upgraded and will use the available budget for the classified roads to also address the needs of unclassified roads.

Notably, the road prioritization criteria used at the central administrative level does not always reflect current needs on the ground. Accordingly, re-prioritization takes place locally, based on the magnitude of the need for maintenance of both classified and unclassified roads and its potential impact. This action is important since provincial governments and district municipalities lack resources to rehabilitate/construct rural roads by themselves.

Road use is monitored by traffic police. ANE controls vehicle weight by means of mobile and fixed weighbridges along the main development corridors. A shortage of weighbridges leads to trucks being able to avoid inspection points or manipulate their weight before or after the weighbridge. ANE has identified overloading as the primary source of wear and tear of the roads. Unfortunately, ANE lacks the resources to hire more people for enforcement and control.

ANE's legal statutes empower it to privatize road management. At this time, the only road corridor under concession in Mozambique is the Maputo-Witbank Corridor (Mozambique-South Africa). This was the first Public Private Partnership venture in Mozambique and in South Africa. The concessioner is the Trans-African Concession Company (TRAC) and the clients are the South African Roads Agency and the Administração Nacional de Estradas. This is a three million rand project over 30 years and is currently on its 11<sup>th</sup> of implementation.

In August 2010, ANE and the Road Fund (RF) launched a tender for concessions on three more roads in the South, Centre and North of Mozambique: (1) Maputo-Maxixe (N1); (2) Beira-Machipanda (N6); and (3) Vanduzi-Changara (N7). These initiatives aim to improve road and safety conditions while reducing the government's maintenance burden. The procurement process is still underway.

**Rail and ports.** CFM is responsible for the overall management of all Mozambican ports and railway systems. Currently, it has concession agreements in the south, center and north of Mozambique:

**Maputo:** Maputo Port Development Company SA (MPDC) was awarded the concession over the whole port in 1998 but it only became effective in 2003. The present concession agreement runs through 2043. MPDC shareholders include Portus Indico (which is DPWorld and Grindrod) and Mozambique Gestores with 51% and CFM and the government of Mozambique with 49%. Of this 49% share, 16% belongs solely to the government; but CFM is the supervisor of those interests.

Most of the competition from the Maputo port comes from Durban and Richards Bay in South Africa. In recent years, the port has experienced increased demand for its services. In 2010, the traffic at the Port of Maputo was USD 8.8 million tons and it is projected that traffic in 2011 will reach USD12.6 million tons.

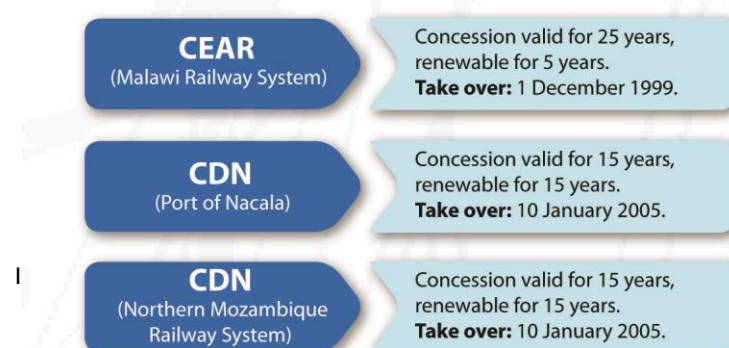
**Beira:** The concession of the Beira Port was awarded to Cornelder de Moçambique (CdM), a joint venture between Mozambique Ports and Railways Company (CFM with 33%) and Cornelder Holding, a Dutch Company with 67%. CdM operates the container and general cargo terminals in the Port of Beira. The Port has a multipurpose container terminal, which includes a grain terminal for cereal discharge and loading and a silo with capacity to store 30,000 MT on cereals. Future plans include the expansion of the silos' capacity of 60,000 MT and terminals for sugar, fertilizers, chrome, coal, and even automobiles.

The Port serves four inland countries: Malawi, Zimbabwe, Zambia, and Eastern DRC. Its competitors are the Durban and Nacala Ports in South Africa and Mozambique, respectively. The port has preferential rates for services rendered by national clients. The Beira Port is not a natural port and needs to be dredged regularly to allow for ships of significant magnitude to dock. The last dredging occurred in 1992; due to lack of maintenance, the port currently cannot accommodate large ships. This also causes significant container congestion – they often have to wait up to two months before release. Cornelder has planned for a dredging of the port to 14m draft, which should be concluded in June 2011. Thereafter, the port should have the capacity to accommodate vessels up to 60,000 MT. Internal capacity also has been built to ensure that regular maintenance of the port takes place, thus further relieving some port congestion. The port also invested in equipment (15 tag-masters and six re-stackers and trailers) to ensure that it is able to meet the demands for its services.

The Beira port currently handles 75% of the tobacco from Zambia. The remainder is handled by the ports in Durban (15%) and Nacala (10%). Mozambican importer-exporters are permitted lower service rates than inland countries – a fact that conflicts with the notion of national treatment in international trade.

Recently, Beira port management increased its rates for storage in an effort to discourage customers from keeping their containers inside the port while waiting for the ship or truck to load it. The inefficient condition of the Sena railway line is another factor that leads to the congestion, not only in the Beira port, but also in the Beira road corridor. Namely, many trucks transport containers from the port to Malawi and Zimbabwe that could be transported by rail, imposing stress on the already saturated roads. The port desperately requires a dry port to ensure that it has the capacity to effectively and efficiently receive and load TEUs. The dry port could also be used for loading and stripping of containers as well as serve as an overflow yard. This would significantly reduce the chances of theft and time spent locating the TEUs. Private sector investment is being sought for the dry port and its location has already been identified by Cornelder. Plans to expand the port are also under way with 10 hectares of land already identified and backfilling services being tendered. The expansion will cost USD 4 million and its pavement another USD 6 million.

### Concessionary Structure



**Quelimane:** A much smaller port compared to the Mozambique's other main ports, Quelimane is nonetheless an important resource, especially for central Zambia and Malawi. The port's concessioner is Cornelder. In



2007-08, the port benefited from a Germany-financed, \$14 million rehabilitation. In 2010, it was dredged to allow for larger ships to dock. This port is still underutilized, however.<sup>84</sup> In 2010, Quelimane reportedly handled 650,000 tons.<sup>85</sup> Durban, Dar-es-Salaam and Nacala are its main competitors.

**Nacala:** The concession of the Nacala corridor involves not only the Port of Nacala (PDN), but also the railway infrastructure in Mozambique. In addition, the Government of Malawi has privatized the management of its railway network between Mozambique and Malawi. Thus, Corredor de Desenvolvimento do Norte (CDN) and CFM are partners in the implementation of these concession agreements both in Mozambique and Malawi (Central Eastern African Railway – 800Km). CDN is integrated into the Nacala Corridor Project, which comprises the northern region of Mozambique, Malawi and Zambia. It links the Port of Nacala with the railway systems of northern Mozambique and Malawi under a single management system, creating a relatively seamless, cost-efficient transportation system and allowing for the integration of synergies between different inter-modal transportation systems.<sup>86</sup>

CDN operates a rail network of 872 track kilometres, with 1.67 meters gauge, from Nacala to the border with Malawi, at Entre-Lagos, and a branch line from Cuamba to Lichinga. Two primary services are provided:

- *General freight.* CDN has the ability to move containerized, bagged and bulk freight, including liquid bulk. A service is provided for imports and exports to and from Malawi via the Port of Nacala. This is operated in unit trains of 1000 freight tons, or 25 wagons of freight from a single customer or shared by more than one customer. The transit times to or from points in Malawi for these trains average 34 hours. Freight is also hauled to and from any of the stations on the CDN network.
- *Passenger Services.* A regular passenger train service with 1st, 2nd and 3rd class coaches operates between Nampula and Cuamba. A considerable amount of intra-provincial agricultural commodities trade takes place through the passenger service as traders travel from productive regions in Niassa to economic centres such as Nampula City.

PDN has a handling capacity of 75,000 TEUs. It plans to increase its container handling facilities from 10 TEUs/hour to 22 TEUs/hour, as well as to improve its capacity to handle grains by building a 17-meter-deep terminal. It has 70 plug points for riffles containing perishable products needing refrigeration. Currently banana and prawns are the main fresh local products regularly exported from this port.

Within PDN, agricultural products have lower service rates than any other product. Local exporters benefit from lower rates and are charged in local currency. Malawi is the main inland country that utilizes this port. Zambia increasingly uses the railway to export its tobacco and timber.

The recent coal mining investments in Tete province (Moatize District) have put pressure on the railway network (the Sena Line) as the main source of transport for coal from production to the port in Nacala. This crossing generally includes Malawi (Moatize-Malawi-Nacala). The conditions of the railway network between Moatize and Nacala are extremely poor for about a

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84. <http://valoie.blogspot.com> (September 21, 2010).

85. <http://www.verdade.co.mz> (December 30, 2010).

86. CDN presentation (January 20, 2011).

70 km stretch between Nkaya and Nayuchi as a result of the damage caused by the Chire River in Malawi.

Lack of clarity and communications has resulted in multiple constraints in the rehabilitation of the railway stretch in Malawi. It was assumed that the Government of Malawi would be responsible for the major rehabilitation/ construction of the railway infrastructure and the concessioner would be responsible for the routine maintenance. However, the Government of Malawi refused to undertake the rehabilitation. Now, with the investments in the coal sector in Tete, the private sector (Vale do Rio Doce and Riversdale) will have to invest in the infrastructure to ensure that its commodity can be exported.

The Nacala port will be responsible for 25% of the coal to be transported through the Sena line from Moatize, with the other 75% exported through the CDN railway system to the Beira Port. A new coal terminal is being constructed by Vale in Nacala Velha. It is estimated that about \$85 million will be spent to rehabilitate the Sena line in order to carry 6 million tons of coal annually, starting in 2011. Another \$200 million will be spent to increase the railway's capacity to 12 million tons a year starting in 2014, and finally around \$400 million may be spent to increase the throughput capacity at the port of Beira from 15 million to 18 million tons by 2013 or 2014.<sup>87</sup>

#### INPUTS AND MARKETING INFRASTRUCTURE

Access to production inputs is a great limitation to agricultural production in Mozambique. Current production lacks critical capacity and quality which could be achieved if inputs such as fertilizers, pesticides, and implements were more readily available. The cost of the productive inputs is prohibitive to peasant farmers. Input suppliers struggle with the quality of rural infrastructure to access production areas. The current distribution network of productive inputs goes as far as the peri-urban areas.

The lack of inputs, such as water and electricity, are a limitation to the private sector to reach rural areas. For instance, the construction of privately run silos and canteens could be more feasible if those services had access to electricity, roads, and water. Only NGOs that have their services subsidized by donors or other significant resources can afford to reach the

The main competitors of the Nacala Port are the Dar-es-Salam, Beira, and Durban ports. The Dar-es-Salaam port also serves northern Malawi. While Nacala Port is less congested than the Beira and Durban ports, the poor state of the roads leading up to the port create disincentives for its use. Nacala is located 200 km from Lilongwe, the capital of Malawi, but the road linking the two is only accessible in the dry season and with much difficulty.

The Sena rail line is situated in the central region of the country and connects the port of Beira with the Moatize coalfields in Tete and Machipanda to Beira. The section between Beira and Moatize covers a length of 552 kilometers and consists of two main sections: (1) Dondo-Dona Ana and (2) Dona Ana-Moatize. The Sena system also consists of two branch lines: Inhamitanga Marroumeu and Dona Ana Vila Nova. In 2004, the railway was assigned to an Indian Consortium Rites and Ircor for a period of 25 years. Unfortunately the consortium was unable to meet the deadlines as stipulated in the contract. Seven years after the agreement, Mozambique's government decided to terminate the contract for lack of performance. Significantly, the government of Mozambique holds 49% of the shares within the concession agreement and CFM has the inspection role.

**Border posts and airports.** The capacity of Mozambique's border posts and airports to handle agriculture produce is weak. Airports in Mozambique are not equipped to handle perishable goods such as fresh produce and seafood. In addition, Mozambique does not have the volumes

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87. Dow Jones newswires, available at <http://www.foxbusiness.com/> (February 21, 2011).



required to attract international commercial freight services into Mozambican airports. Currently, agriculture produce is exported as sea or road cargo. In both instances, exporters complain of long delays at the border or ports as the customs' service tends to be slow and irregular. The documents required for exports reportedly change without notice and the customs officers' knowledge on how to process agriculture products is limited.

Borders are staffed with agricultural officers who are there to perform phytosanitary clearance. Overall, understanding around the agronomic nature of fresh produce is weak, which results in lack of flexibility by the custom officers. Containers are typically kept for four days at Mozambique's borders, thus reducing the shelf-life and value of produce. Trucks transiting through Mozambique to other countries have to repeat inspection and bureaucratic procedures, resulting in further delays.

The introduction of scanning services has created delays and redundancies in inspections. At the Beira and Nacala ports, exporters complain that the scanners operated by Kuduma are expensive, add to their costs, and were introduced without warning. The container scanning service is available at the customs offices in FRIGO and Machava and the ports in Maputo, Beira and Nacala.

**Information technology.** Market information is key for the development of agriculture markets at the district, provincial, and national levels. Although current information on infrastructure is limited, initiatives have been playing an important role in providing services to stakeholders.

In 1991, MADER established Mozambique's Information System for Agricultural Markets (SIMA).<sup>88</sup> This agency is charged with collecting and disseminating information on agricultural markets, including data on prices, market-specific opportunities, and other market insights. It distributes a weekly newsletter, *Quente Quente*, which it supplements with special reports and occasional releases. SIMA assures the transmission of information via radio, newspaper, television, Internet and on paper. A total of 25 products are covered across 27 markets levels: producer, wholesale and retail.

Over the years, SIMA has been given new challenges to meet the demands of its users. One of the main innovations is the de-centralization of the national SIMA through the establishment of Provincial SIMAS (SIMAPs). At the provincial level, the main goal is the development and strengthening of local expertise to meet local needs in partnership with local organizations and the private sector.

At the district level, SIMA market information is disseminated through the Local Economic Activities offices, which are jointly managed by the Ministry of Agriculture and Ministry of Industry and Commerce.

## 6.4 SUPPORTING INSTITUTIONS

In addition to the institutions legally bound to act on behalf of the different sectors, there are supporting entities that act to improve the enabling environment of Mozambique's agribusiness sector.

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88. SIMA website, available at <http://www.sima.minag.org.mz/>.

**Private sector.** The private sector in Mozambique is still very young. Although the country's socialist regime changed in the early 1990s in favor of a more capitalist economy, concrete actions beyond the written laws still need to be implemented to promote private sector development.

#### KEY SUPPORTING INSTITUTIONS

- Private sector, including business associations
- Laboratories
- NGOs

Mozambique's socialist past still permeates people's distrust for cooperative movements. In Mozambique, associations used to bring people of the same ideological beliefs together. Private sector organization structures often represent medium to large enterprises in the urban and economic development regions. Micro-enterprises often lack representation in such structures, leading to a lack of access to information and services which are often made available by commercial sector associations. CTA, a confederation of business associations, serves as the highest level of representation for larger private-sector players. CTA is supported and recognized by the government.

Within CTA, there is an agribusiness forum which deliberates issues raised by other commercial agriculture member associations and presents them to government with the aim of finding solutions. Other horticultural and livestock associations that represent agribusinesses are spread throughout the country but are mostly informal, with weak organizational structures. The most known and active private sector commercial associations are:

*AIMO (Mozambican Industrial Association).* AIMO represents the interests of industry in Mozambique. It is a member of CTA and actively participates in representing the private sector before public institutions in the discussion of policies. It also serves as a liaison between foreign and local investors and provides training for its members.

*FRUTISUL (Fruit producers in the south of Mozambique).* Initially focused in the south of Mozambique, FRUTISUL soon realized that the issues that constrained producers in the agribusiness sector in the south were the same or worse all over the country. Today it lobbies for all fruit producers and addresses issues faced by some of its members. FRUTISUL inspired the creation of FRUTINORTE and FRUTICENTRO to represent interests in the north and central regions of the country respectively. The three associations lack resources to better represent their members and make their voice heard.

*ACIS (Associação de Comércio e Indústria).* ACIS is a non-profit association founded to promote investment and development in Mozambique and to forge links between government and the private sector. It currently has over 240 members, representing a combined investment of \$50 billion, with a combined workforce of more than 65,000 employees, and is working with more than 450,000 community out-growers. ACIS has an extensive library of electronic and hardcopy information and legislation available to all members. It supports members by arranging training courses and places a strong focus on transparency and ethical business. ACIS has produced an anti-corruption toolkit aimed at supporting companies doing business in Mozambique. ACIS also promotes corporate social responsibility among its members. The services offered by ACIS are regarded as useful to those members interviewed during the AgCLIR diagnostic.

*Productive, processing and trading agribusinesses.* There are successful cases of commercial agriculture producers and trading firms throughout Mozambique. Each faces a variety of constraints to operate, yet they strive to continue in business, understanding that this market has potential and can be profitable. Agribusinesses currently use pick-ups, trucks, and helicopters to reach rural areas. They create product reserves and make them available as seed to ensure production; develop distribution systems; invest in fertilizer blending plants and

processing plants; and otherwise incur high costs and risks to reach rural areas. Through AgCLIR interviews, private sector interest in soya sorting capacity emerged; that said, local production falls between 8,000-10,000 MT per annum while 150,000 MT are required to make the investment feasible. There is, however, potential to open a processing plant for sesame as critical mass is increasing. Current production is reaching 25,000 MT per annum. The East Asian markets are growing and demanding large volumes of sesame at competitive prices.

**Laboratories.** While a number of food testing laboratories are operating in Mozambique, none of these has the international accreditation that would authorize these laboratories to certify the quality and safety of food exports. In other words, while these laboratories have the capabilities to conduct appropriate tests, they do not have the authority to certify the results of the tests. Laboratory accreditation is a rigorous and lengthy process that requires compliance with international standards for equipment, procedures, and record keeping, and requires inspection by an authorized, internationally-recognized organization. Currently, exporters in Mozambique who have the need for certification must use laboratories in South Africa at considerably higher cost and a longer delay than would be the case for certification in Mozambique. Examples of laboratories in Mozambique that have the capabilities for food testing, but cannot certify the results are the Lúrio University laboratory for aflatoxin in Nampula; the food testing laboratory at the Ministry of Health in Maputo, which can test for pesticide residue; and the three laboratories operated by the National Institute for Fish Inspection at Maputo, Sofala, and Bimba.

At the time of this diagnostic, the United Nations Industrial Development Organization was engaged in a comprehensive survey of laboratories available to support all productive sectors throughout the country. Indeed, among UNIDO's mandates in Mozambique is to enhance the country's capacities of the food safety and quality assurance system for trade. The objective of this project is to "achieve a significant increase in the amount of exports and products in the food sector certified as internationally compliant, thereby improving export market access for Mozambican food products."<sup>89</sup> To this end, UNIDO seeks to help strengthen the national system for food safety analyses, certification, and inspection with a view toward enhancing compliance with international standards as well as with the TBT/SPS WTO agreements. The agency also endeavors to help upgrade the food microbiology and chemical analytical laboratories housed at the Agricultural Research Institute (IIAM) to support food inspection and facilitate exports in selected agro food sectors with important trade potential, such as cashew nuts, honey, fish, fruits, and vegetables. In addition, calibration services provided by INNOQ (the national institute for quality, standardization and metrology) will also be strengthened along with repair and maintenance activities to provide services to the food testing laboratories as well as to the industry.

**Non-Governmental Organizations.** NGOs have proven an important player in the socio-economic development of Mozambique and are especially active in the agriculture sector. Often with significant donor support, NGOs have implemented projects to alleviate poverty through increased productivity and agriculture commercialization. NGOs have promoted market-led activities for the development of value chains which result in the introduction of new cash crops, increased production of traditional crops, and commercialization of systems. The table that follows summarizes some of those efforts.

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89. Website of UNIDO Mozambique, available at <http://www.unido.org/index.php?id=6023>.

**TABLE 7: AGRIBUSINESS ACTIVITIES BY NGOS IN MOZAMBIQUE**

NGO	Agriculture production	Organization strengthening	Technology transfer	Storage	Commercialization
<b>ADIPSA</b>	Promotes semi-commercial agriculture for new cash crops such as sesame and soya beans. Promotes agriculture among youth to make it more commercial	Works with producers associations and strengthens them on management and good governance issues	Co-finances the acquisition of production equipment such as irrigation systems and tractors	Provides storage facilities to producer associations to enable them to store and increase their bargaining power in the market	Conducts studies on behalf of farmers to better inform them on the markets to reach out to.
<b>Aga Khan</b>	Works in key value chains with producers in Cabo Delgado	Strengthens entrepreneurs capacity to better organize themselves and meet market demands			Conducts studies on behalf of farmers to better inform them on the markets to reach out to
<b>CLUSA</b>	Association members are encouraged to increase yields of maize, ground-nuts, and cashew	Associations receive technical production and organizational support		Storage facilities are created at local production areas and transported to the main warehouse	Group commercialization has enabled farmers to enter the fair market and resulted in increased incomes

<b>Helvetas</b>	Promotes production of cash crops in Nampula and Cabo Delgado			Increased storage capacity in rural villages of Cabo Delgado by building 700 silos	
<b>SNV</b>	Increasing production through improved production systems in the beekeeping, cashew, and banana value chains	Training of stakeholders to increase private sector participation in markets; promotion of market development concepts such as Inclusive Business to promote integration of communities in economic development			Through the value chain intervention, commercialization is strengthened.
<b>TechnoServe</b>	Provides technical assistance to promote the production expansion of the poultry, cashew, fruits, and soya beans value chains; facilitates access to capital and is involved in policy development in the sectors;		Transfer of production/ processing technologies which make producers more efficient, effectively increasing incomes		Has created a demand for cashew nut and soya beans, which has led to increased production

NGOs play an important role in disseminating market information as they share price information with the associations they work with.

**Donors.** Mozambique's large donor community is well aware of the weak marketing infrastructure in the production areas in Mozambique. Some donors include in their strategic plans investments in rural infrastructure, which become components of their country programs. The following is a brief summary of the main donors financing rural infrastructure:

- ADIPSA supports the Mozambican government to rehabilitate and maintain rural roads in specific agricultural areas in the provinces supported by DANIDA. The component runs under the aegis of the Ministry of Public Works and Housing (MOPH) and by ANE (National Roads Administration). The objective of the component is to strengthen market access for

small producers through improved infrastructure. In general, rural roads serve the rural population and are a necessary condition to guarantee market access. During construction, the population living along the road works is offered the possibility of short-term jobs.

- IFAD's intervention promotes rural market access by improving small-scale farmers' access to and participation in agricultural markets and value chains. IFAD develops more efficient market intermediaries and more effective partnerships to stimulate increased agricultural production and added value. Through PROMER IFAD enables small-scale farmers to increase their incomes from agriculture by helping them market their surpluses more profitably. The program's specific aims are to:
  - improve small-scale farmers' access to and participation in agricultural markets and value chains
  - develop more efficient market intermediaries and more effective partnerships to stimulate increased agricultural production and added value
  - favor a more conducive environment for agricultural market operations

The program will work towards strengthening government agencies, farmers' organizations, agribusiness enterprises, service providers and others involved in market linkages and value chains. The aim is to enable them to be more effective in coordinating, stimulating and implementing initiatives that will improve market access for small farmers.

- NORAD has for the past years worked to strengthen rural infrastructure from rural roads to access to rural electrification. In 2008, its efforts ensured that 100,000 rural people had access to the national electricity grid. NORAD continues to build capacity within the Ministry of Energy.
- The Millennium Challenge Corporation (MCC) is midway through a five-year compact agreement with the Ministry of Planning and Development to work in four areas – infrastructure, land registration/reform, agribusiness, and water and sanitation. With respect to its infrastructure and water/sanitation work, implementation was projected to begin in March 2011. The arrangement entails agreements with local institutions such as ANE in the case of roads infrastructure; FIPAG, DNA and ARAS for water; and DPAs, DNT, IIAM for research; and many others for land and agribusiness. An estimated 35% (USD170 million) of the total budget is for roads infrastructure where critical road stretches such as Chimuara–Nicoadala (167 km) in Zambézia Province; Rio Ligonha –Nampula (102 km) and Namialo –Rio Lúrio (148 km) in Nampula Province as well as Rio Lúrio – Metoro (74 km) in Cabo Delgado province, in total 491 kilometers of roads will be rehabilitated. The program will also invest 45% of its budget to improve access to water and sanitation for many rural people in the north of Mozambique.

## 6.5 SOCIAL DYNAMICS

**Priorities and politics.** Mozambique's social dynamics are stable but not static. The socio-cultural environment is constantly developing and directly influences the economy as a whole. The popular demonstrations against the increases in cost of living are an example of the dissatisfaction of the Mozambican people. The demonstrations that occurred in September 2010 were not the first; others previously occurred in 2008. Although government has acted toward minimizing the effect of global prices on local staple food and fuel costs, it is not enough. The rise of costs is felt by all income brackets, but the low income earners are more vocal.

Preventing these sorts of demonstrations is not only important for political stability but also to secure the country's infrastructure.

Investment costs in infrastructure are important to improve the quality of life of the nation. For instance, the Maputo-Witbank corridor, which has TRAC as the concessioner, requires significant maintenance investment. For instance, the roads between Maputo and Matola cost about 100,000 Rand per kilometer to maintain while those outside Matola cost an estimated R60,000 per kilometer. Despite routine maintenance costs, unexpected public disturbances can cause great damage which require unplanned investment to repair. After the demonstrations of 2010, TRAC spent an estimated 127 million MTn to repair the damaged caused.

The use of political influence to affect decisions is common in Africa, and Mozambique is no exception. There are known cases of senior government officials in Mozambique and Malawi benefiting from the poor state of the roads and railways network with the ownership of road transport enterprises. There is clear evidence of political influence in some companies managing development corridors. Some of the road transport companies in the central and northern corridors of Mozambique belong to senior government officials. Such behavior is a clear conflict of interest, tends to benefit a few, and hinders the economic development of a region and its people as a whole.

**Gender and access to marketing infrastructure.** The participation of both women and men in the agribusiness sector along the value chain from production to commercialization varies significantly. In the south of Mozambique, women tend to be involved in the production of subsistence crops and the commercialization of fruits and vegetables. In the north and center, women remain focused in the production of subsistence crops, while also aiding men in the production of cash crops. However, due to cultural norms, women in the north are not significantly engaged in the formal workforce in agriculture production and processing enterprise, with certain exceptions found in light factory work. Women often prepare the meals to be served during the lunch-break but are not expected to work outside the home side-by-side with the men. As women become better educated, they may participate in the administrative tasks of a productive/processing enterprise.

In contrast, women in the south tend to make up a great portion of the labor force of agriculture productive and processing enterprises (banana, citrus, and cashew farms and processing plants). This is likely due to the migration of men to the South African gold mines and construction sites, which leaves women as the head of households and often propels them into the formal workforce.

It is also important to note that women from the south play an important role as inter-provincial agriculture commodity traders. They purchase cereals, beans, and groundnuts in the central and northern productive provinces, and rent the services of truck drivers to sell those commodities in Gaza and Maputo markets.

## 6.6 RECOMMENDATIONS

### **SUPPORT ANE TO HASTEN THE CONCESSION PROCESS OF THE MAPUTO-MAXIXE (N1), BEIRA-MACHIPANDA (N6) AND VANDUZI-CHANGARA (N7) ROADS**

Along those roads, there should be tollgates and weighbridges. At least 15% of the annual revenue from those concessions should be allocated as part of the annual budgets of the province where the road is located to address unclassified rural roads.



## **IMPROVE DONOR COORDINATION OF INVESTMENTS IN RURAL MARKETING INFRASTRUCTURE**

An investment in production without roads, water, and electricity does not have the same impact as one where all those components are integrated. In addition, the private sector should be motivated to participate in the economic growth of that area. Public companies like Electricidade de Moçambique, FUNAE, Águas de Moçambique (AdM), FIPAG and ARAS (Sul, Centro e Norte) should be part of the stakeholders' coordination to avoid planning in isolation and priority setting without looking at existing needs of the agriculture sector and potential for development. More dialogue and strategic aligning is necessary for effective investments in production and marketing infrastructure.

## **INTRODUCE ONE-STOP BORDER BETWEEN MOZAMBIQUE AND ZIMBABWE**

A one-stop border would speed the customs and clearance procedures. This border stop has a lot of truck movement and with the concession of the N7 it would make sense to include a joint border facility.

## **ENLIST AGRONOMISTS IN THE CUSTOMS SERVICE**

Together with customs officers from the agriculture department, specially assigned agronomists would be responsible for the inspection and clearance of agricultural produce. This coordination would ensure compliance with the WTO agreement on agriculture prioritization.

## **INTEGRATE FINDINGS FROM THE 2011 UNIDO LABORATORY STUDY INTO PRIVATE SECTOR DEVELOPMENT EFFORTS**

As of spring 2011, UNIDO was expecting release of a comprehensive study of soil and food labs located throughout the country. The need for higher quality laboratory services was emphasized repeatedly throughout this study, but producers and processors alike. The results of the study should assist in creating a road map for assisting enterprises in identifying the services they need; promoting the development of private labs to meet needs of the private sector; and otherwise strengthening the quality of Mozambican products.

## **WORK TO REDUCE CONGESTION AT BEIRA AND LEARN FROM PAST EXPERIENCES**

Much of the current congestion originated from the strike in the Durban port in October 2010. As a result, there is an estimated backlog of 3,000 TEUs currently waiting to arrive in Beira Port. The management of the Beira port did not consider the effects the strike would have on its operations. Therefore, the Government/CFM should use the Sena railway line experience as an opportunity to learn from, which can go a long way in teaching how to best formulate, implement, and monitor concession contracts.

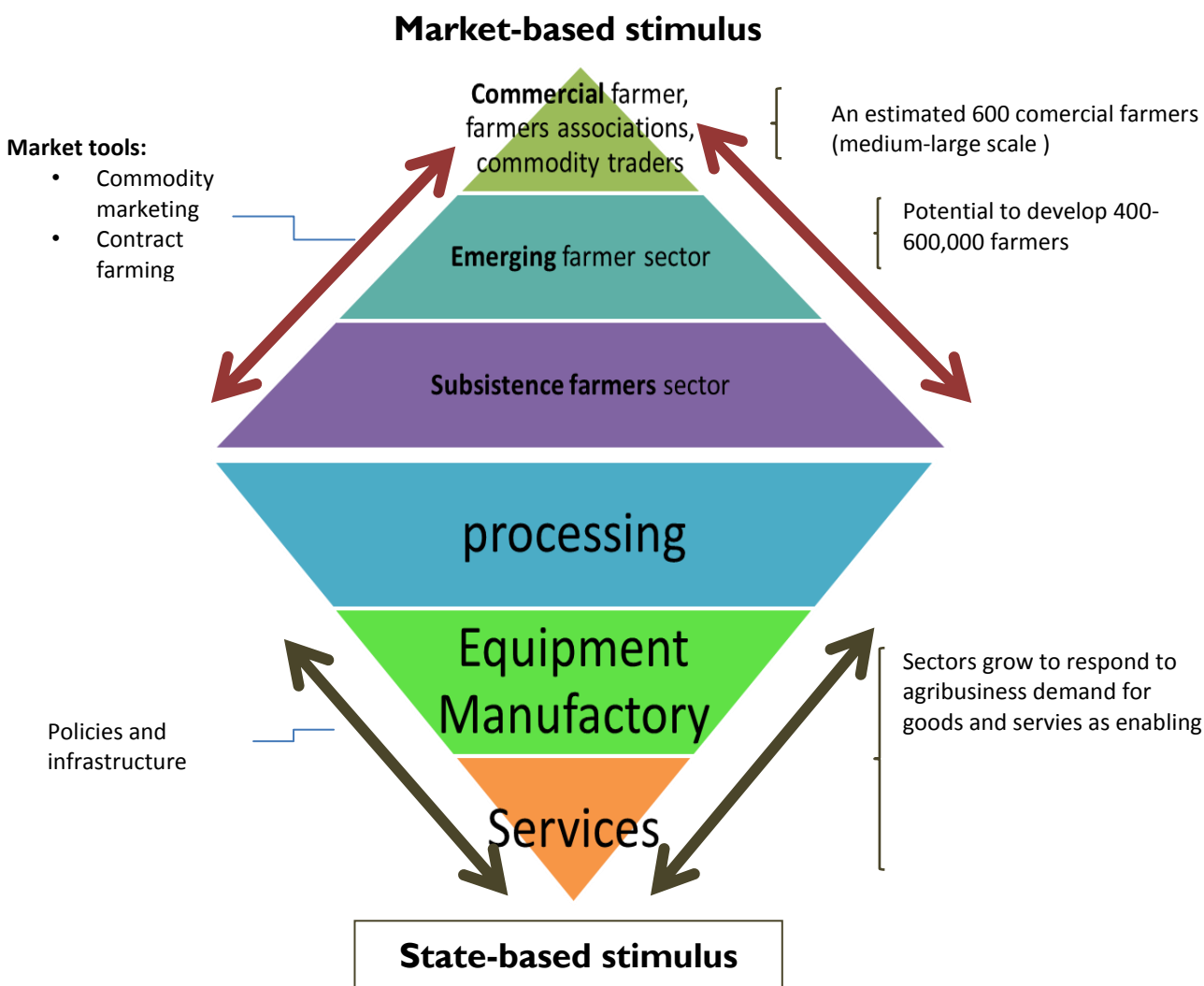
## **CREATE FURTHER INCENTIVES FOR THE PRIVATE SECTOR TO INVEST IN STRUCTURES SUCH AS SILOS, DRY PORTS, GRADING AND PACKAGING FACILITIES, AS WELL AS TRADING HOUSES AND FRESH PRODUCE MARKETS**

Current incentives are not sufficient to attract investment in infrastructure in the agribusiness sector. Conditions such as the presence of water, electricity, and roads should be created to motivate their investment in the rural and urban areas within the agribusiness sector.

In contrast to neighboring Zambia, there are very few subsidies available to Mozambican farmers to purchase inputs. Most farmers say they desire subsidies, but they have been shown not to solve production problems in themselves. Malawi is an example of a country which has subsidized inputs yet is unable to meet its demand for cereals, thus purchasing from Mozambique at very low cost. The Mozambican government should consider possible incentive options pertaining to fertilizers and pesticides to make them more affordable for the rural peasant.

In addition, the slim extension network cannot yet meet the demand for its services and ensure that agriculture production meets its full potential. Moreover, quality needs to be promoted among producers and processors. There is a need to support farmers who invest in quality seed and inputs and promote its use to farmers who do not invest by establishing grading systems and differentiated prices based on quality.

Agriculture in Mozambique is often not concerned with commercialization – for many, many farmers, subsistence is believed to be that can be hoped for. The development of a class of emerging commercial farmers needs to be supported. This can only be successfully done if government, NGOs, and the private sector are coordinated to align strategic objectives and invest in an orderly manner. Such an approach would lead to production being market-oriented and the demand for critical mass and quality met over the long-term. The promotion of emerging farmers is indeed critical, and the concept is shared by many stakeholders. A suggested approach on how this could be done follows:



### **OPEN LARGE EXTENSIONS OF LAND (2000-5000 HECTARES) IN PROVEN PRODUCTIVE AREAS FOR CASH CROPS SUCH AS CORN, GROUNDNUTS, BEANS, SESAME, AND SOYA BEANS**

Implementing institutions responsible for infrastructures such as roads, railway, electricity, and water should be involved to ensure access to infrastructure. Private sector in the form of farmers with proven experience organized in commercial associations should compete to access and cultivate the land. NGOs and government should collaborate to provide extension services while private sector in the form of input suppliers should be motivated to service this class of producers.

Agricultural finance for production and commercialization should be in place to enable producer associations to acquire credit to purchase implements and inputs, while commodity traders can access funds to purchase stock, build silos, and for grading, packaging and processing facilities. Existing commodity trade houses in the north and central regions could be involved to secure competitive purchasing contracts.

## **PROMOTE PRIVATE-PUBLIC-PARTNERSHIPS TO INVEST IN MARKET INFORMATION SYSTEMS THAT PROVIDE ACCURATE MARKET INFORMATION ON MARKET DEMAND, SUPPLY, TRENDS, PRICES, AND OPPORTUNITIES AT THE DISTRICT LEVEL**

In addition, the local industry should be encouraged to invest in new technologies to service the agribusiness sector.

- Use of natural resources such as the gas in Panda and Evatephosphate in Tete to invest in the fertilizer sector.
- Promote fertilizer blending units which will enable crop specific fertilizer production, as well as industry to produce tools and spare parts for agriculture equipment (such as water pumps, irrigation systems, tractors) without which the agribusiness sector will not be competitive if it continues to import inputs and services.

As the emerging farmers' layer grows, so will the subsistence sector as it will leverage from some of the interventions in the former sector such as job creation and technology transfer. Above all, it will have a close example to follow which is important in human behavior change.

## **CONTINUE CAPACITY-BUILDING COLLABORATION**

Implementing institutions lack the know-how and financial resources required to efficiently and effectively deliver their services. Specialization training could be provided to the technical staff of entities such as ANE, INNOQ, MIC, MINAG, and CFM to strengthen their capacity to manage concession contracts, make policies and technical decisions, which will affect the country as a whole.

### **IMPROVE ORGANIZATIONAL STRUCTURE OF BUSINESS ASSOCIATIONS AND DEVELOP CAPACITY OF TECHNICAL STAFF TO ANALYZE AND PROVIDE FEEDBACK TO GOVERNMENT DRAFT POLICIES**

As part of private sector development, funds and technical assistance should be allocated for business association development at central and district levels. Emphasis also should be made to build capacity within the micro and small enterprises as they are often not represented within business associations and may face somewhat different growth issues.

### **IMPROVE BUSINESS SKILLS TRAINING FOR PRODUCER ASSOCIATIONS IN THE RURAL AREAS**

The recently launched SMME/Associations development fund (MESE) should change its application requirements as most applicants within the SMME bracket will not be able to comply with it.

### **STRENGTHEN THE INFORMATION ON RURAL INFRASTRUCTURE THROUGH A TAILORED MARKET INFORMATION SYSTEM.**

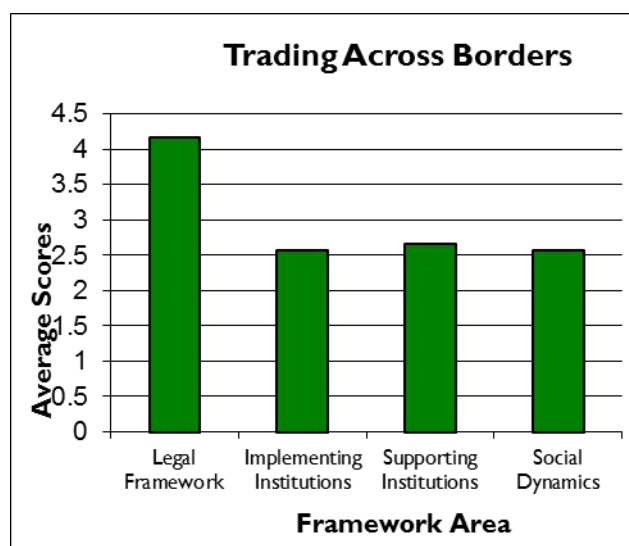
A database of the current rural infrastructure and their state should be developed to help in the planning process as those areas are developed. The MIS should include information on current state of roads, current construction projects of roads, as well as updates on projects being undertaken in the rural roads.



# 7. TRADING ACROSS BORDERS

## 7.1 INTRODUCTION

There is broad consensus that deeper integration of countries and communities in regional and international markets contributes to more stable food supplies and spurs development.<sup>90</sup> This chapter is divided into two parts: Trade Policy and Trade Facilitation. Trade policy pertains to Mozambique's commitment to building formal trade relations with its neighbors in Southern Africa, the entire African continent, and international markets, through such mechanisms as mutual tariff reductions and the streamlining of trade processes. Trade facilitation refers to the simplification and harmonization of a country's international trade procedures, in line with current best practices and globally accepted standards. Trade facilitation also looks at how procedures and controls governing the movement of goods across national borders can be improved to reduce associated cost burdens and maximize efficiency while safeguarding legitimate regulatory objectives.



The AgCLIR scoring system gives a relatively healthy average score for the Legal Framework, with each of the areas showing considerable need for sustained improvements.

## 7.2 LEGAL FRAMEWORK – TRADE POLICY

Despite improvements in Mozambique's laws, institutions, personnel, and infrastructure in recent years, delays, administrative burdens, and corruption continue to elevate the country's transactions costs of regional and international trade in agricultural products. More should be done to increase the effectiveness of trade institutions, integrate border crossing procedures between neighboring countries, improve risk management, streamline customs clearance processes, improve technology utilization, curb corruption, and address the infrastructure needs for agricultural products moving through Mozambique's ports, airports, and trade corridors.

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90. International Food and Agricultural Trade Council, IPC Alert, "High Food Prices and Food Price Volatility: What Role for Policy?" (April 5, 2011).



**TABLE 8: TRADING ACROSS BORDERS STATISTICS, RANKINGS AND SCORES**

Trading Across Borders		Trading Across Borders	
<i>Doing Business</i> Ranking 2011	<b>133</b>	<b>Average Score for each framework area</b>	
<i>Doing Business</i> Ranking 2010	<b>136</b>	Legal Framework	4.16
Documents for export (number)	<b>7</b>	Implementing Institutions	2.56
Time for export (days)	<b>23</b>	Supporting Institutions	2.66
Cost to export (US \$ per container)	<b>\$1,100</b>	Social Dynamics	2.57
Documents for import (number)	<b>10</b>		
Time for import (days)	<b>30</b>		
Cost to import (US \$ per container)	<b>\$1,475</b>		

**Trade Policy.** Mozambique has worked to institute a program of trade reforms since the early 1990s. As a result, it has one of the most open trade regimes in Africa.

Mozambique has five tariff bands (0, 2.5, 5, 7.5, and 20%) with the highest tariff rate applied to basic food products such as meat, fish, fruits, vegetables, beverages, and clothing. The taxable base for the tariff is the CIF customs value. In addition, goods and services may be subject to: 1) a value added tax (VAT) at 17% of CIF value; 2) an excise tax (specific consumption tax), levied on tobacco products, alcoholic beverages, and luxury products; and 3) a surtax, levied on “sensitive” products including sugar, cement, and steel products such as galvanized steel, steel sheets, and tubes. Mozambique applies an export tax of 18% on raw cashews and unprocessed wood. Its maximum Most Favored Nation (MFN) applied tariff,<sup>91</sup> excluding alcohol and tobacco, is 20%, whereas the average overall tariff rate is 10.3%. The agricultural sector remains more protected (6.8%) than the non-agricultural sector (5.5%).

The World Bank calculates that Mozambique’s index of trade restrictiveness<sup>92</sup> from 2006-2009 was 5.7%, well below both the Southern African Development Community (SADC) and Sub-Saharan Africa (SSA) averages of 9.5% and 14.6%, respectively. Based on this particular index, Mozambique ranks 65th out of 125 countries worldwide<sup>93</sup> (where 1st is least restrictive).

Regarding Mozambique’s commitment to liberalizing its trade in services, however, the World Bank calculates that Mozambique’s rating on the General Agreement for Trade in Services

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91. The MFN tariff is the tariff level that a member of the WTO charges on imports from other members.

92. This index, known as the MFN Tariff Trade Restrictiveness Index (TTRI) measures the trade restrictiveness of a country based on its Most Favored Nation (MFN) tariff schedule. This index is equivalent to a single tariff rate on all products that would maintain the country’s aggregate import volume at its actual level, under the current regime of heterogeneous tariffs. It is expressed in percent as if it were a tariff rate.

93. World Bank. 2010. “Mozambique Trade Brief.” World Trade Indicators 2009/10: Country Trade Briefs. Washington, DC: World Bank. Available at <http://www.worldbank.org/wti>.

(GATS) Commitments Index is only 4.95<sup>94</sup> (based on a range from 1-100, where 100 is most liberal), ranking it 120 of 148 countries.

**Trade framework.** Mozambique's trade framework includes the country's legal framework for trade policy and its international trade agreements. Mozambique's goal for trade relations is to achieve "an international trade policy and a strategy for regional economic integration in Southern Africa and in the principal world markets that is favorable, in aggregate terms, to Mozambican producers and consumers".<sup>95</sup> Furthermore, Mozambique seeks to maintain appropriate levels of economic openness for the country to benefit from flows of technology, skills, information, financial resources, investments, and trade to enable effective integration with world markets. Its stated desire is to increase Mozambique's integration with regional and international economies through continued development of trade and investment relationships; gradual and progressive liberalization of international commercial exchanges; and by encouraging heavier flows of trade and investment.

Mozambique's Ministry of Industry and Commerce (MIC) is responsible for the formulation and implementation of trade and industrial policy. The Ministry's International Relations Department is directly involved in trade-related matters and with negotiating trade and investment agreements. Other ministries involved in trade matters include the Ministry of Finance, which is in charge of the tariff, customs, taxation, and government procurement, as well as those government agencies responsible for related economic sub-sectors. Dialogue with the private sector is carried out mainly through the Confederation of Mozambican Business Associations (CTA), which represents private interests in improving Mozambique's business and investment environment.

### 7.3 INTERNATIONAL TRADE COMMITMENTS

**WTO.** Mozambique has been a member of the World Trade Organization (WTO) since 1995. Its status within the WTO is that of Least Developed Country (LDC), which brings certain rights such as technical assistance and longer transition periods before being required to fully implement WTO agreements. Mozambique grants at least most-favored-nation (MFN) treatment to its trading partners, which provides similar trading opportunities to all states with which it has trade agreements.

**SADC Trade Protocol.** Mozambique is a founding member of the Southern African Development Community (SADC), which was established in 1992. The objectives of SADC are to promote economic development, peace, and security for the people of Southern Africa, through regional integration and the development of complementary national and regional strategies and programs. In December 1999, Mozambique approved the SADC Trade Protocol. Mozambique is one of eleven SADC members that are currently implementing the trade protocol, whereby tariffs have been eliminated on trade in most goods with other implementing members. Tariffs on additional items are due to be eliminated by 2012, although final details are still under discussion, and Mozambique, as a LDC, has until 2015 to comply. If fully implemented, the protocol will give Mozambican products duty free access to a market of more than 250 million people with a GDP of \$470 billion, with reciprocal treatment for the goods from 10 other nations, including South Africa.

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94. Based on the General Agreement on Trade in Services (GATS) Commitments Index (0-100, most liberal) <http://data.worldbank.org/data-catalog/world-development-indicators>.

95. As described in Mozambique's latest Action Plan for the Reduction of Absolute Poverty (PARPA II).

**African Economic Community.** SADC is one of the seven Regional Economic Communities (RECs) recognized by the African Union (AU). The AU sponsored the creation of the African Economic Community (AEC) in June 1991, under the terms of the Abuja Treaty. This treaty provides for the creation of an African common market in six stages over 34 years. The integration process is based on the coordination and harmonization of tariff and non-tariff measures between the different Regional Economic Communities. As a member of SADC, Mozambique is a de facto member of the AEC. Furthermore, Mozambique is a founding member of the African Union.

#### KEY TRADE POLICY LAWS AND AGREEMENTS

- International trade commitments – WTO, SADC Trade Protocol, AEC, EU, AGOA
- Bilateral trade agreements
- Import and export laws and regulations

**European Union.** Mozambican products enjoy duty-free entry into European Union (EU) member nations under the Everything but Arms (EBA) arrangement. This is an initiative of the EU, dating from 2001 under which all imports to the European Union from LDCs are duty free and quota free, with the exception of armaments. However, EU imports from these countries of three “sensitive” agricultural products – bananas, rice, and sugar – were slowly liberalized over several years and by September 2009, these products had also achieved non-quota, duty-free status. The free trade status of sugar, in particular, provides Mozambique an expanded opportunity for exporting to the EU<sup>96</sup>.

Mozambique, as a member of the SADC block of countries, has finalized an economic partnership agreement (EPA) with the EU under the general terms of the Cotonou Agreement<sup>97</sup>. In 2009 an interim EPA was concluded with Mozambique, Botswana, Lesotho, Swaziland and Namibia. Four of the five countries have signed the agreement, but the fifth - Namibia – is still pending. Angola has not yet presented a tariff offer, but maintains access to EU markets through the EBA initiative. South Africa and the EU have a separate agreement for trade, development, and cooperation (TDCA), which establishes preferential trade arrangements and the progressive introduction of a Free Trade Area between the two partners.

Important aspects of the interim EPA are the following:

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96. With regard to Mozambique’s sugar exports, there is an intervening organization between SADC member states and the EU Market, which is the SADC Technical Committee on Sugar (TCS). This organization was established under the SADC Commercial Protocol and deals with all sugar-related issues in the region. This committee assigns quotas for exports to foreign markets. However, Mozambique’s sugar production is limited and its exports are not constrained by the quota.

97. The Cotonou Agreement is a treaty between the European Union and the African, Caribbean and Pacific Group of States ('ACP countries'). It was signed in June 2000 in Cotonou, Benin, by 78 ACP countries and the 15 European member states that comprised the European Union. The agreement entered into force in 2003. While its primary aim is for poverty reduction and sustainable development, it is best known as a trade arrangement between the EU and ACP countries. It calls for the creation of Economic Partnership Agreements (EPAs), based on reciprocal trade between the EU and either trade blocs or individual countries of the ACP. While the EU provides duty-free access to its markets for ACP exports, ACP countries must also provide duty-free access to their own markets for EU exports, although on a phased basis. The Cotonou Agreement replaced the 1975 Lomé Convention whereby the EU granted non-reciprocal trade preferences to their ACP partners. However, the LDCs within the ACP that choose not to open their markets to EU products will be able to continue their access to EU markets under the Lomé arrangements, or through the Everything But Arms initiative. Non-LDCs that are not in a position to enter into EPAs can enter the EU’s Generalized System of Preferences (GSP), or the Special Incentive arrangement for Sustainable Development and Good Governance (GSP+).

- No duties or quotas for exports from these EPA partner-countries to the EU;
- A commitment by the EU to foster trade with countries in the region by helping exporters meet EU import standards;
- No duties or quotas on 81% of EU exports to Mozambique (Sensitive sectors such as agricultural products and textiles are excluded; liberalization will take place gradually and be completed by 2023.); and
- Options for Angola and South Africa to join the EPA.

**United States.** The trade and investment relationships between the United States and Mozambique are managed through the 2005 U.S.-Mozambique Trade and Investment Framework Agreement (TIFA), which created a Trade and Investment Council to discuss bilateral and multilateral trade and investment issues. The related U.S.-Mozambique Bilateral Investment Treaty (BIT) also came into force in 2005. An agreement between Mozambique and the Overseas Private Investment Corporation (OPIC), a semi-independent U.S. government agency, has been in effect since 2000 to assist with project finance, through loans or loan guaranties, and political risk insurance in Mozambique.

Under the African Growth and Opportunity Act (AGOA) and the Generalized System of Preferences (GSP), a wide range of Mozambican products receives duty-free entry to the United States. A key provision of AGOA is the duty-free entry of apparel manufactured in Mozambique, including apparel manufactured with third-country fabric. The preferential arrangements contain no reciprocal treatment for U.S. products entering Mozambique; nor is there a comprehensive free trade agreement (FTA) in place between Mozambique and the United States.

**Trade agreements with SADC member countries.** Mozambique has preferential trade agreements with two SADC members: Malawi and Zimbabwe.

- *Mozambique-Malawi:* This preferential trade agreement was signed in December 2005 and became effective in July 2006. This agreement was an update of a similar agreement signed by the Portuguese colonial authorities with Malawi prior to Mozambican independence. It allows for free trade of goods originating in the two countries, excluding beer, certain soft drinks, tobacco, sugar, vegetable oil, chickens and eggs, office equipment, petroleum products, weapons, ammunition, and explosives. The Mozambique-Malawi agreement has simpler rules of origin than those outlined in the SADC Trade Protocol.
- *Mozambique-Zimbabwe:* A bilateral trade agreement between Mozambique and Zimbabwe came into effect in January 2004. This agreement allows for the duty-free trade of all goods produced or manufactured in either country, provided they meet the local content requirements specified in the pact and are not on a mutual “negative list”. Almost all agricultural products, live animals, forest products, and fish and fish products enter duty free, while products including arms and ammunition, refined and unrefined sugar, soft drinks, aerated beverages, manufactured tobacco, and motor vehicles are assessed duties.
- *Mozambique-South Africa:* Even though South Africa extends non-reciprocal preferential market access to selected goods of Mozambican origin, these two SADC member states do not have a standing formal agreement on bilateral trade. Instead, South Africa has created a special rebate item under the South Africa Customs & Excise Act, which came into force in 1990. While a considerable number of agricultural and fish products imported from Mozambique are subjected to quotas and import permits, the preferential arrangement allows for duty free entry of some fish products, prawns, cashew nuts, wooden furniture,

handicrafts, vehicle tires, coconut oils, textiles, and clothing, provided the requisite rules of origin are satisfied.

**Mozambique's trade-related laws.** Mozambique's primary laws, decrees, and resolutions related to international trade are presented in following table. This legislation embodies what appears to be an extraordinary exercise of government control over the products coming into, and departing from, Mozambique, as well as the currency exchange associated with these transactions.

**TABLE 9: MOZAMBIQUE'S PRINCIPAL TRADE-RELATED LAWS AND REGULATIONS**

<b>Sector</b>	<b>Instrument/Law</b>
Tariff	Decree No. 39/2002 of 26 December 2002, as amended by Law No. 03/2007 of 7 February 2007
Customs valuation	Decree No. 38/2002 of 11 December 2002
Customs procedures	Diploma Ministerial No. 262/2004 of 22 December 2004
Value added tax	Law No. 32/2007 of 31 December 2007
Excise taxes	Decree No. 52/1998 of 29 September 1998, as amended by Decree No. 37/2002 of 11 December 2002
Import prohibitions and licenses	Decree No. 39/2002 of 26 December 2002
Pre-shipment inspection	Decree No. 56/1998 of 11 November 1998
Technical standards and regulations	Resolution No. 51/2003 of 30 November 2003
Sanitary and Phytosanitary measures	Decree No. 15/2006 of 22 June 2006 and Diploma Ministerial No. 9/2007 of 31 January 2007
Investment (except for mining and petroleum)	Law No. 3/93 of 24 June 1993 and its regulations contained in Decree No. 14/93 of 21 July 1993
Industrial Free Zone	Decree No. 62/99 of 21 September 1999, as amended by Decree No. 35/2000 of 17 October 2000
Mining	Law No. 14/2002 of 26 June 2002
Petroleum	Law No. 3/2001 of 21 February 2001
Fiscal Benefits Code	Decree No. 16/2002 of 27 June 2002
Commercial Code	Commercial Code Decree No. 2/2005 of 27 December 2005
Labor Law	Law No. 23/2007 of 1 August 2007
Protection of industrial property	Decree No. 4/2006 of 12 April 2006
Land Law	Law No. 19/97 of 1 October 1997
Protection of copyright and related rights	Law No. 4/2001 of 27 February 2001
Competition	Resolution No. 37/2007 of 24 July 2007
Privatization of state-owned enterprises	Law No. 16/75 of 13 February 1975
Government procurement	Decree No. 54/2005 of 13 December 2005
Flora and fauna	Law No. 10/99 of 7 June 1999
Fisheries	Decree No. 43/2003 of 10 December 2003
Aquaculture	Decree No. 35/2001 of 11 November 2001
Hydrocarbons (downstream activities)	Decree No. 63/2006 of 26 December 2006
Electricity	Law No. 21/97 of 1 October 1997
Water	Law No. 16/91 of 3 August 1991
Ground transport (automobiles)	Decree No. 24/89 of 8 August 1989
Ground transport (public)	Decree No. 39/2005 of 29 August 2005
Maritime transport	Law No. 4/96 of 4 January 1996
Civil aviation	Resolution No. 40/2002 of 14 May 2002
Telecommunications	Law No. 8/2004 of 11 July 2004
Tourism	Law No. 4/2004 of 17 June 2004
Foreign exchange regime	Law No. 3/96 of 4 January 1996
Banking services (credit and microfinance institutions)	Law No. 9/2004 of 21 July 2004
Insurance	Law No. 3/2003 of 21 January 2003
<b>Source:</b> World Trade Organization, <i>Trade Policy Review</i> , Report by the Secretariat – Mozambique, December 1, 2009	

**Import and export laws and regulations.** According to *Doing Business*, importing goods into Mozambique requires 10 different documents and 30 days to complete, and the process costs the importer \$1,475. In general, with the exception of goods in transit to a third country, goods entering Mozambique are subject to customs duties and value-added tax (VAT). Goods in transit, such as those arriving at the ports of Maputo, Beira, and Nacala, shipped to neighboring countries are exempt from customs and VAT. All importers must be licensed by the National Directorate of Trade of the Ministry of Industry and Commerce, although registration is a straightforward process. Only authorized clearing agents can file documents with customs for the import and export of goods.

The following documents are required for imports exceeding US \$500.00:

1. Bill of lading;
2. Cargo release order;
3. Certificate of origin (required for duty-free; importation from SADC countries);
4. Commercial invoice; and
5. Customs import declaration.
6. Delivery order
7. Inspection report from scanner
8. Packing list
9. Pre-shipment inspection clean report of findings (only for certain cargo, such as used vehicles)
10. Terminal handling receipts.

To import agricultural products such as grains and fresh fruit and vegetables, the goods must first be authorized entry by Mozambique's Ministry of Agriculture and also must be accompanied by a phytosanitary inspection certificate from the country of origin. For imports of used clothing, a fumigation certificate is required.

**Export regulations:** *Doing Business* states that exporting goods from Mozambique requires seven different documents, takes an average of 23 days to complete all the requirements, and costs the exporter \$1,100. The following documents are required to export goods from Mozambique:

1. Bill of lading;
2. Cargo release order;
3. Commercial invoice;
4. Customs export declaration;
5. Inspection report from scanner;
6. Packing list; and
7. Terminal handling receipts.



In addition, a sanitary or phytosanitary certificate is needed to export animals, plants, or seeds. These certificates attest to the good health and condition of the exported products. Furthermore, exports to some countries require a fumigation certificate for the shipping container to ensure that unwelcome pests do not enter that country.

## 7.4 IMPLEMENTING INSTITUTIONS – TRADE POLICY

**Ministry of Industry and Commerce.** The Ministry of Industry and Commerce (MIC) formulates and implements trade and industrial policy. Its responsibilities include regional and international trade, as well as the domestic trade of all products, including agricultural commodities. The Ministry is in charge of WTO-related matters and negotiating trade and investment agreements. Other ministries involved in trade-related matters include the Ministry of Finance, which is in charge of the tariff, customs, taxation, and government procurement, as well as those responsible for sectoral matters, such as agriculture. Inter-ministerial committees are organized as needed to support MIC activities.

Although MIC is responsible for issuing operating licenses to importers and exporters, it is not directly involved in the process of importing and exporting. Through its Institute for Standardization and Quality (INNOQ), MIC regulates and monitors product standards, weights and measures, and product quality, and supports their harmonization with international organizations such as the International Standards Organization (ISO), the Food and Agricultural Organization (FAO), and SADC. Another MIC agency, the Mozambique Export Promotion Agency (IPEX), is responsible for developing and increasing Mozambique's exports of products and services. The work of these two agencies is described in a later section of this chapter. Furthermore, it is noteworthy that MIC is the responsible ministry for trade in agricultural products produced by local farmers, instead of the Ministry of Agriculture, which is the norm in many countries.

### KEY IMPLEMENTING INSTITUTIONS

- Ministry of Industry and Commerce
  - DRI
  - IPEX
  - INNOQ
- Ministry of Agriculture
  - Department of Plant Protection
  - Directorate of Veterinary Services
- Ministry of Health
  - Department of Public Health

**Ministry of Agriculture.** The Ministry of Agriculture (MOA) oversees the production and trade of agricultural and livestock products in Mozambique. Imports, as well as exports of horticultural products and the importation of agricultural chemicals are under the control of the Department of Plant Protection (DPP). This organization is responsible for quarantine, inspection, and the emission of phytosanitary certificates. The DPP and customs are jointly responsible for the operation of the quarantine group.

Similarly, the import and export of animals and animal products is controlled through licenses issued by the Directorate of Veterinary Services. This organization also conducts inspections and oversees quarantine requirements for animals and animal products.

The PPD encompasses three separate offices that support trade in agricultural products:

- *Plant Quarantine Services.* This office issues import permits for fresh horticultural products, as well as grain crops including rice and maize; it issues phytosanitary certificates for agricultural exports and inspects storage facilities for agricultural products. The rules for importing and exporting agricultural products are contained with the Plant Quarantine regulations.
- *Agro-chemicals.* This section is being strengthened to monitor and control fertilizer and pesticide applications and the importation of farm chemicals.
- *Plant Protection Section.* This office monitors and controls plant pests and diseases.

All agricultural products (plants and plant products and the products of apiculture) imported into Mozambique require an import permit issued by the PPD, and a phytosanitary certificate issued

#### FRUIT FLY INFESTATION IN MOZAMBIQUE

A devastating fruit fly of Asian origin, known as *Bactrocera invadens* of the family Tephritidae was first reported in 2007 in the Cuamba District of Mozambique's Niassa Province. *B. invadens* was recorded for the first time in 2003 along the Kenyan coast. By early 2005 it had spread to Tanzania, Sudan, Benin, Uganda, Cameroon, Togo, Senegal, Ghana, and Nigeria. The hosts of these flies belong to a wide variety of families of plants, and include many major commercial crops. Fruits and vegetables are the most important crops attacked, including citrus, mango, apples, cucurbits, tomatoes, and many others. The detection of *B. invadens* in Mozambique led to the curtailment of fruit exports to South Africa and Zimbabwe.

With the assistance of USDA-APHIS in South Africa, Mozambique's Plant Protection Department carried out fruit fly surveillance activities throughout Mozambique to determine the extent of infestation from the genus *Bactrocera*.

The survey, based on fly traps, found high populations of flies in Cabo Delgado Province, with only a slight incidence in Nampula. Two fly specimens were found at the economically important Vanduzi Farms near Chimoio, but it was believed that these pests were probably introduced along the trucking route from Tete, and were not the result of natural expansion. Furthermore, after an eradication program at the farm, no further pests were found. As a result of the survey, most production locations in the center and south of Mozambique have been declared to be free from *B. invadens*, and fruit production from these locations is now permitted entry into South Africa. Unfortunately, banana production from the Matanuska farm near Nampula is still being blocked from entry into South Africa and Zimbabwe. Other small farms are similarly impacted by these bans. The PPD is conducting field studies to demonstrate that green bananas are not a host for fruit fly, and that commercial shipments of green bananas should be permitted entry into South Africa, even from infected areas.

by the exporting country. For seeds, an additional requirement is a certificate stating that the product in question is not genetically modified, as their importation is prohibited by Mozambique. SADC countries also require a Certificate of Origin (CO). The import permit must be issued before the goods are shipped. Imports of animals and products of animal origin must obtain a similar importation license, issued by the veterinary authorities.

The PPD requires two documents for agricultural exports: 1) an import permit from the country to where the agricultural products are being exported, and 2) a phytosanitary certificate for the export shipment, issued by the Plant Quarantine Services. In the event that the importing country does not require, or does not have the facility to issue an import permit for agricultural products from Mozambique, this office will inspect the export shipment and then issue a phytosanitary certificate.

**Plant and animal health and food safety requirements.** Exporting countries must meet three important conditions to engage in international trade in agricultural products: conformity assessments, sanitary and phytosanitary (SPS) measures, and international product standards:

- **Conformity assessments:** For export goods from Mozambique to be accepted by importing countries, Mozambique must prove that its exported products are compliant with their import standards. Importers must have full confidence that test data and inspections from Mozambique are reliable and that certifications of food safety made in Mozambique can be trusted. With the exception of the seafood industry (see the following text box), Mozambique lacks the required laboratories and certification procedures to demonstrate that its products meet international standards.
- **Sanitary and Phytosanitary (SPS) Measures:** Sanitary (human and animal health) and phytosanitary (plant health) measures are used to ensure food safety and to prevent the spread of pests and diseases. Exported products must generally come from disease-free areas, be inspected, and undergo specific treatments to set maximum allowable levels of pesticide residues or additives in foods. The export of processed products requires meeting minimum conditions for sanitation and hygiene in production areas and in product handling, physical inspection and control, the application of Hazard Analysis and Critical Control Point (HACCP) systems, as well as laboratory checks carried out by competent authorities. Mozambique has difficulty in complying with these measures due to its lack of expertise, inadequate laboratories and a limited inspection and compliance system. Furthermore, Mozambique's phytosanitary control system is weak, resulting in major crop losses to pest damage and limited access to foreign markets, including South Africa.
- **International product standards:** In addition to the need to comply with official standards for food safety and plant health imposed by international organizations and importing countries, the process of entering higher value markets in Europe (supermarkets and larger retailers) may require producers and processors to be certified for GlobalGAP and/or to follow other private standard schemes such as those established by the British Retail Consortium (BRC) for food quality, product traceability, and agricultural practices. For example, the Vanduzi Company, an exporter of fresh vegetables located near Chimoio, is certified for higher level agricultural production by Tesco Supermarkets, Leaf Mark, and Field to Fork. These international certification schemes require conformity with specified production and quality standards, and must be independently verified. Consequently, they are expensive to achieve and are generally beyond the reach of smaller exporters.

With increasing worldwide concerns over food safety, importing countries are placing increasingly stringent requirements on imported agricultural and food products that Mozambique exporters are ill-equipped to meet. This inability limits market access and reduces the sales values of exported products. For example, cashew nuts are currently exported unprocessed to India or processed in Mozambique and exported, mainly to Europe. Opportunities exist to further expand small-scale cashew processing, which in turn would require farmers and processors to comply with internationally recognized systems, such as Good Agricultural

Practice (GAP) and Hazard Analysis Critical Control Point (HACCP), and to respect limits on plant infections and pesticide residues. Similar requirements also apply to the trade in small farmer crops such as beans, pulses, oilseeds, and groundnuts. Pigeon peas (lentils), for instance, are reportedly exported from Mozambique to Malawi for processing and re-export to India. With suitable food processing and a credible system of certification in Mozambique, this product could be processed in Mozambique and exported directly.

Mozambique is a member of several international bodies involved in product standards and food safety, including the WTO, the Codex Alimentarius Commission, the International Standards Organization (ISO), the International Office of Epizootics (IOE), and the International Plant Protection Convention (IPPC).<sup>98</sup>

In Mozambique, the implementation agencies for SPS are the National Institute of Standardization and Quality (INNOQ), located within the Ministry of Industry and Commerce; the Department of Plant Protection and Directorate of Veterinary Services (Ministry of Agriculture), and the Department of Public Health (Ministry of Health).

The Department of Public Health is responsible for establishing and enforcing food legislation, and, in this regard, it cooperates directly with institutions responsible for exports, such

## FOOD SAFETY IN THE FISHERIES SECTOR

The Fisheries export sector is a major element of the Mozambican economy. The industry supports more than 70,000 people, and the foreign exchange it earns helps the country to pay for its imports. Mozambique is a major exporter of prawns to European markets and, consequently, has developed strong sanitary measures and internationally recognized food safety inspection and control procedures to ensure its continued access to this lucrative market. The National Institute for Fish Inspection (INIP) is the competent authority for fish inspection in Mozambique. This Institute, established by the Ministry of Fisheries in 2002, administers and monitors the safety and quality of exported fish products. As such, INIP is responsible for enforcing all legal provisions related to fisheries SPS issues in Mozambique.

With the EU's assistance, INIP has worked for several years to become qualified to identify, manage, and implement the SPS/food safety activities specific to fish and fishery products to ensure that Mozambique enjoys continued access to the European Union for its fisheries products.

This work has been carried out in four main focus areas:

- Strengthening the legislative framework that underpins SPS matters in the fisheries sector;
- Improving the quality and reach of the INIP inspection service;
- Developing laboratory capability in Mozambique; and
- Enhancing awareness within the fishing industry of EU requirements and standards for fish products.

Mozambique's fishing industry is its leading sector in terms of SPS and food safety standards and

98. The international framework regarding food safety includes the International Plant Protection Convention (IPPC), the Codex Alimentarius and the World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures (the SPS Agreement), the World Health Organization and the Food and Agriculture Organization (FAO). The most important international agreements related to food standards are those of the WTO, which include the agreement on the application of sanitary and phytosanitary (SPS) measures. Compliance with the conditions of the SPS Agreement is a basic requirement of countries seeking to export agricultural produce. The International Plant Protection Convention (IPPC) is a multilateral treaty deposited with the Director General of the FAO. The SPS agreement identifies the IPPC as the organization responsible for elaborating the standards that will help ensure that the measures implemented by each country to protect plant health are harmonized and that they do not constitute barriers to trade. The Codex Alimentarius is the recognized international body for food standards. Codex standards, guidelines and codes of practice are recognized by the WTO as references for the settlement of disputes in international trade. For that reason, the food safety standards of most countries are based on the Codex.

as the Ministry of Fisheries and Ministry of Agriculture. It has a section responsible for border inspections and food products, and is responsible for issuing sanitary certificates to firms. Within the horticulture industry, it has inspection authority over packing sheds.

The Mozambique fisheries Inspection Institute (INIP) is an organization within the Ministry of Fisheries that is responsible for SPS and food safety issues within the fisheries sector. Its main role is to ensure that Mozambique continues to enjoy access to the European Union for its fisheries products.

To fully develop its potential for agricultural exports, Mozambique must strengthen its plant health services, develop capacity to undertake pest risk analysis, update its national pest list, develop national surveillance programs, establish and/or maintain pest free areas in accordance with international requirements, and create a network of internationally certified laboratories.

**The National Institute for Standards and Quality (INNOQ).** Mozambique has an unhappy history whereby expired, adulterated, and mislabeled products have for many years been dumped onto its markets, to the detriment of its people. INNOQ is evolving to become an important safeguard within the government to protect Mozambique's consumers from sub-standard products and to ensure that weights and measures are correct for those products sold commercially. INNOQ is a national public institution within the Ministry of Industry and Commerce. Although it is under the control of the Ministry, it is a separate legal entity with administrative autonomy. INNOQ is responsible for establishing and enforcing national quality standards and quality systems, and for spearheading Mozambique's national quality policy. The implementation of the country's quality policy and strategies was approved by Mozambique's Council of Ministers in November 2003. The main elements of this policy are normalization, metrology, conformity assessment,<sup>99</sup> accreditation, technical regulations, and SPS measures. The quality policy is an integral part of the development of a national quality system<sup>100</sup> (NQS). The quality policy was developed with the collaboration and participation of stakeholders and with financial and technical support from the Swedish International Development Cooperation Agency (SIDA) and the United Nations Industrial Development Organization (UNIDO). It is a key step in the improvement of the quality of products and services in Mozambique.

Mozambique's five-year development plan (2010-2014) was adopted in April 2010. Within the area of industry, the consolidation of the national quality system is one of its strategic objectives. Its aim is to promote better quality, efficiency, and competitiveness of Mozambican products. INNOQ works in four related areas:

- *Quality management.* INNOQ is the lead institution carrying out the work to implement and strengthen NQS to ensure the safety and effectiveness of products, processes, and services. INNOQ also coordinates the national legislative agenda, and ensures that stakeholders are heard in the process. This agency is responsible for the approval and certification of Mozambican standards created through NQS.
- *Standardization.* INNOQ is responsible for coordinating the process of developing and approving national standards and for their national dissemination, and thereby creating a strong foundation for business development. Thus far, INNOQ has developed and put into

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99. A conformity assessment determines that a process, product, or service meets standards and fulfils requirements. It includes the certification of products, systems, and persons as well as testing and inspection of infrastructure.

100. A quality management system is defined as the organizational structure, procedures, processes, and resources needed to implement quality management of a product or process. Good quality management ensures product safety and efficacy and customer satisfaction.



effect a total of 235 national product standards that generally relate to agricultural and food products, including maize, wheat, and their derivatives, and fruit and vegetables.

Technical Standards are prepared according to the procedures and concepts emanating from the NQS. Standards are developed through a consensus-building process that involves government, manufacturers, traders, and consumers. Standards are prepared by specialized technical committees with the participation of relevant stakeholders. Their development takes into account the country's needs and complies with international guidelines.

- The SADC Cooperation in Standardization (SADCSTAN) works to harmonize standards and technical regulations within the SADC member countries. INNOQ works closely with SADCSTAN, and also shares information with the South Africa Bureau of Standards. INNOQ is also a member of the International Standards Organization (ISO).
- *Metrology.* Metrology is the science of measurement and its application. Metrology includes all theoretical and practical aspects related to measurements in any field of industry, commerce, health, environment, science, or technology. A core responsibility of INNOQ is the calibration and verification of measuring instruments used by both public and private operators. It validates the national standards for metrological testing, and is promoting the establishment of a national network of metrological laboratories. It also verifies that scales and other measuring devices used in commercial trade are calibrated for proper measurement, and that commercial products are appropriately labeled with the correct weight or volume.
- *Certification.* INNOQ is the designated agency for commercial certification in Mozambique, while the Ministry of Health is responsible for issues related to food safety. If a company requests certification for its product, INNOQ will visit the site, inspect its products and processes, and if appropriate, issue the certification. While its certification is recognized locally, INNOQ, itself, is not accredited for its certification to be recognized internationally<sup>101</sup>. This is a severe limitation on its effectiveness.

A similar problem is that none of the testing laboratories in Mozambique have international accreditation to certify food safety and food quality. Until Mozambique's laboratories have been accredited, the required certification will have to be obtained from laboratories in South Africa.

Mozambique's government has recognized the important role filled by INNOQ and has recently authorized substantial increases in its budget and staff. It increased its staff from 13 people in 2000 to 48 employees in 2010, and future increases are planned later this year when it moves into its new facility near Maputo, where construction is now underway for a modern office building and a fully-equipped testing laboratory. These improvements should have a highly positive effect on Mozambique's business climate.

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101. This limitation was highlighted in a discussion between the AGCLIR team and a government representative. Prawns from Mozambique are not permitted entry into the United States because the method used to net the prawns during fishing has not been certified as being safe for sea turtles. While safeguards against harming sea turtles during the fishing process are relatively easy and inexpensive to implement, the main obstacle is the actual certification of the process. No internationally recognized agency is readily available to certify the process. With proper accreditation, INNOQ could certify the netting as being turtle-friendly, which would open the US market to prawns from Mozambique.

## 7.5 SUPPORTING INSTITUTIONS – TRADE POLICY

**Confederation of Mozambican Business Associations (CTA).** The CTA, detailed in this report's chapter on Dealing with Licenses, generally supports the free-trade agenda of the government.

**USAID/Mozambique TIP Project.** The USAID-funded Trade and Investment Program (TIP) (2005-2010) provided demand-driven technical assistance to the Ministry of Industry and Trade, the CTA, and other institutions to promote trade and growth in Mozambique. TIP had the dual purpose of increasing international market access for Mozambican products and enhancing Mozambique's competitiveness by reducing the costs of doing business. These objectives were supported by TIP's work to achieve a more favorable trade policy, a more supportive enabling environment, and targeted interventions in specific sectors. Project activities were centered on providing government and the private sector with a policy and legislative framework essential to foster economic growth leading to poverty reduction in Mozambique. The still-active TIP website has a wealth of information, although somewhat dated, on trade policy and trade constraints in Mozambique.

**USAID/Mozambique SPEED Project.** The USAID-funded Support Program for Economic and Enterprise Development (SPEED) (September 2010-September 2014) works with government and the private sector to strengthen private sector participation in policymaking. This project responds to the need to prioritize, deepen, and accelerate key policy reforms; strengthen private sector participation in policy dialogue; and create the capacity and systems to ensure that key reforms are implemented effectively. SPEED's goal is to have more companies doing more business, resulting in increased trade and investment and a stronger competitive position for Mozambican firms, thus creating local opportunities for job and income growth. SPEED builds on the accomplishments of TIP.

SPEED provides long-term technical assistance to the Ministry of Industry and Commerce, and manages a substantial budget for local and international technical assistance for specific, timely analysis of policy constraints and recommended solutions. SPEED also has a grant fund that will provide demand-driven support to private organizations, including business and industry associations, for policy analysis, dialogue, advocacy, and change.

In response to the desire of the MIC to increase Mozambique's Doing Business ratings, SPEED has developed several recommendations to achieve short-term gains in specific areas, such as the elimination of pre-shipment inspections for imported products and passing an effective bankruptcy law. However, implementation of some of these changes may prove difficult, reflecting the relatively weak position of the MIC vis-a-vis other government ministries. For example, elimination of the pre-clearance requirement for certain imported products was attempted earlier under the TIP project without success, and this requirement is generally recognized as a "cash cow" for an unnamed senior government official. In any event, improving Mozambique's Doing Business standings will likely require a long-term effort, including implementation of a long-term strategy that is not undermined by conflicts of interest by key government actors.

The focus of the SPEED project is on domestic policy only. The project defers to the USAID-supported Trade Hub in Botswana to support regional harmonization and SADC trade issues (as discussed below).

**World Bank.** The World Bank supports Mozambique with a particular focus on the business enabling environment. As part of the Mozambican Competitiveness and Private Sector Development Project, the World Bank intends strengthen linkages between foreign investors and domestic producers and farmers in the horticulture sector. To aid in this sector, a sub-



component of the project will support the establishment of a national quality training center in Nampula specialized in tropical fruit operations. The training center will be a public-private partnership which will collaborate intensively with the international banana marketing company Chiquita which has recently announced a major investment in the province and would contribute to the center through the development of training material and the provision of trainers.

**GIZ.** The Deutsche Gesellschaft fuer International Zusammenarbeit (GIZ), as one of the implementing agencies of the Mozambican-German development cooperation, concentrates on the three priority areas of primary education and vocational training, decentralization for rural development and economic reform and development of the market system. In the area of agricultural development, GIZ acts as the lead implementing agency of the project “African Cashew initiative”, which is concentrating on supporting the cashew value chain in five African countries. In Mozambique, the project focuses on farmer training, market linkages of cashew farmers and the development of the cashew processors’ association AICAJU.

### COMPLAINTS OF NON-TARIFF BARRIERS

SADC has established monitoring mechanisms to address NTBs, whereby stakeholders can report and monitor the resolution of barriers encountered as they conduct their business in the region. This web-based NTBs reporting, monitoring, and eliminating mechanism is accessible to economic operators, government functionaries, academic researchers and other interested parties. The following is a sample of recent comments reported for Mozambique:

- Malawi - NTB-000-191, 2009-07-27; Logistical bottlenecks along the Nacala and Beira rail routes have resulted in nearly 60% of Malawi's tobacco exports being sent overland to the more distant port of Durban. The Nacala and Beira routes are relatively expensive and inefficient.
- Mozambique - NTB-000-230, 2009-12-10; Importers of medicine experience delays in clearance because pre-inspection certificates are not issued on time.
- Mozambique - NTB-000-395, 2011-02-11; "FRIGO" customs clearing in Maputo - Meat in brine imported from South Africa classified under tariff code 0210.20.00 being subjected to 15% import duty: We have been importing under this tariff code for 18 months without paying duty. Now a ruling was made on 11 February that duty of 15% is applicable. Mozambique Customs does not agree with the tariff code notwithstanding that this is the code accepted by South Africa as correct.
- Mozambique NTB-000-391, 2011-02-14; Withholding tax of 20% is charged on any payment made to a company not registered in Mozambique. Export of fresh produce to Europe by airfreight, or to South Africa by refrigerated road haulage, cannot be carried out by any company registered in Mozambique. Therefore payment to service providers such as international airlines and road haulers engaging in export of perishable goods to Europe or South Africa is subject to payment of 20% withholding tax. International airlines and road haulers do not accept the deduction of this tax meaning the exporting company based in Mozambique must assume this as a cost, thus increasing the cost of export products, and reducing the margin made on exporting these products.
- Zimbabwe - NTB-000-381, 2010-06-08; Mozambique police are charging fines to transporters although their Registration Books have been notarized by the Mozambique Embassy. Notarized Documents are acceptable throughout Mozambique except in some areas, particularly the Beira region. Transporters from Malawi and Zimbabwe entering through Mulange/Muloza; Forbes/Machipanda; Nyamapanda/Cuchamano; Dedza/Calomue; and Mwanza/Zobue border posts are affected by these fines. Authorities in these corridors do not accept certified copies of the documents.

**Southern African Development Community (SADC).** The Southern African Development Community is an inter-governmental organization headquartered in Gaborone, Botswana. Its

goal is to further socio-economic cooperation and integration as well as political and security cooperation among 14<sup>102</sup> southern African states.

SADC was created in 1992 as a regional organization with 10 member states for cooperation in social, economic, political, and mutual security issues. SADC emerged from the earlier Southern African Development Coordination Conference (SADCC).

SADC has a formal operating structure including, Heads of State, the Council of Ministers, and the Committee of Senior Officials. Its implementing organization is the SADC Secretariat, which is responsible for carrying out the decisions made by the Heads of State and Council of Ministers. It is headed by an Executive Secretary. The Secretariat has a relatively small staff and budget, and is tasked with administrative issues related to the organization.

Under its goal to further regional integration, the SADC member states established the objectives of establishing a Free Trade Area by 2008, a Customs Union by 2010, a Common Market by 2015, and the creation of a Monetary Union by 2016.

The SADC Treaty provides the legal basis and framework for SADC's mission: *To promote sustainable and equitable economic growth and socio-economic development through efficient productive systems, deeper cooperation and integration, good governance, and durable peace and security, so that the region emerges as a competitive and effective player in international relations and the world economy.* The main goals of SADC are to form common political interests and support greater trade and investment flows between member states.

All but two of the 14 SADC Member States (Angola and the DRC) have established a Free Trade Area (FTA) under the legal framework provided by SADC's Protocol on Trade. The protocol commits members to phase out existing tariffs, harmonize trade procedures and documentation within the SADC member states, define SADC rules of origin, and reduce non-tariff barriers to trade. The FTA is a step along the path toward deeper regional economic integration, a key element of SADC's strategy and objectives. SADC attained the status of an FTA in January 2008. The FTA exempts 85% of intra-regional trade from tariffs with the aim of fully liberalizing trade by 2012. The remaining 15% is for traded goods in sensitive products that could affect the member countries' local markets. These are planned to be included in the FTA provisions in coming years.

SADC is a free trade area in which most goods are traded duty-free but without a common external tariff. Although the SADC members were able to achieve the FTA as planned in 2008, they were not able to agree on a Customs Union<sup>103</sup> by the self-imposed deadline by the end of 2010. The official reason was because "more study" is needed to analyze the impact on the member states. However, some observers believe that SADC members are having second thoughts on this degree of integration after seeing the internal conflicts within the Southern Africa Customs Union (SACU), whose members - South Africa, Botswana, Lesotho, Namibia,

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102. SADC member states are Angola, Botswana, Democratic Republic of the Congo (DRC), Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe. A fifteenth member – Madagascar – was suspended due to a military coup.

103. A customs union is one in which members decide collectively on a common external tariff for goods coming from outside the area. All goods traded internally are supposed to be duty free.

and Swaziland - are also members of SADC<sup>104</sup>. Regardless, deepening integration within SADC through the creation of a customs union has slowed.

SADC member states have agreed to eliminate all non-tariff barriers (NTBs) and refrain from imposing new barriers, except where declared necessary on the grounds of health and safety, public morals, and national security. The removal of import and export restrictions has been slow, and is complicated by the fact that NTBs often result from policies that are not intended to restrict imports – instead, some restrictions may be necessary to ensure food safety and limit the spread of animal or plant-borne diseases. On the other hand, given the tenacity of the NTBs and the difficulty of their elimination, many observers believe that the countries are attempting to recover some of the lost revenue resulting from the decline in import duties with the increasing number of products that are freely traded. Other observers believe that many of the region's smaller economies are simply attempting to protect their markets from the hegemonic South Africa. For whatever reason, trade between the SADC members is quite low - intraregional trade still accounts for slightly above 22% of the region's total trade and the low level is largely blamed on non-tariff barriers<sup>105</sup>.

A considerable amount of time has been spent by SADC countries on negotiating the rules of origin, which were eventually agreed as being product specific. Exports from one SADC country to another are covered by strict rules that define where the product originated, but "originate" in this context does not mean the country from where the goods are shipped, but the country where their goods are actually made. This raises a definition problem in cases where less than 100% of the raw materials, processes, and added value are not all from the exporting country. All goods that meet the requirements of the SADC rules of origin qualify for preferential tariff treatment when they are traded between SADC member countries. The rules prevent non-SADC goods from benefiting from the preferential tariff treatment offered under the trade regime. To qualify for the preferential tariff, the product must have been wholly obtained in one of the member countries, or the non-originating materials incorporated into the product must have undergone "sufficient working or processing" to qualify, or the value of all external materials must not exceed 10% of the ex-works cost of the product. The corresponding Certificate of Origin (CO) must be issued by the competent authority in the SADC member country of export. Due to its complexity, the CO has become a contentious issue within SADC, and is often used as a non-tariff barrier.

A recent World Bank Trade Policy Note<sup>106</sup> estimates that the average tariff equivalent of non-tariff barriers is 40%, and that these barriers affect considerably more than one-fifth of regional goods trade. Consequently, they are seen as a serious hindrance to competitiveness within the SADC region.

The five main types of barriers that limit regional trade and competitiveness are the following:

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104. SACU is a customs union that has been operating for approximately 100 years. The revenue sharing formula for the common external tariff that has evolved among the SACU members severely penalizes South Africa by requiring a disproportionate distribution of revenue to the smaller states. If the SADC Customs Union became a reality, the SACU members would be absorbed into the larger SADC Customs Union. South Africa would not likely agree to the same revenue sharing formula that is now used in SACU, and the smaller SACU members would not likely agree with a more equitable revenue sharing – therefore, the process of further integration would be stalemated. Furthermore, South Africa is the dominant economy within SADC, and the smaller members are concerned that a common external tariff would simply protect South African manufacturers from external competition and thereby enable goods from South Africa to achieve an even greater penetration of the smaller SADC economies.

105. Felix Njini, "SADC FTA limping forward" (August 1, 2010).

106. World Bank, Deepening Regional Integration to Eliminate the Fragmented Goods Market in Southern Africa (Africa Trade Policy Notes, Note 9).

1. Inefficiencies in transport, customs and logistics, which increase the costs of trade;
2. Cumbersome fiscal arrangements at border posts;
3. Restrictive rules of origin that limit the application of preferential trade arrangements;
4. Poorly designed technical regulations and standards that limit consumer choice and hamper trade; and
5. Trade permits, export taxes, import licenses and bans – often linked to infant industry protection arrangements – are seen as a particularly significant problem.

Border crossings in the Southern Africa region are a major bottleneck to the movement of imports and exports. Many of the region's transport delays can be attributed to the requirement to check on compliance such as customs inspections, truck weights, and document checks by border officials and at police road blocks. Various studies have demonstrated that improving the efficiency of the operations at border posts will lead to a significant reduction in the overall cost of transport faced by importers and exporters. A major pillar of the harmonization program among SADC member states is the adoption of integrated border management principles at the major border crossings and on-going efforts to establish one-stop border posts. Many SADC member states are landlocked, with imports and exports having to cross several borders, making trade facilitation a key factor in their economic competitiveness.

In Mozambique, customs, border procedures, and transport have been identified as priority constraint to Mozambique's exports. Despite improvements in laws, institutions, personnel, and infrastructure in recent years, delays, administrative burdens, and corruption continue to elevate traders' transactions costs. More must be done to improve the management of trade institutions, integrate border institutions, improve risk management, streamline customs clearance processes, address customs' infrastructure needs, improve technology utilization, and curb corruption.

## **7.6 SOCIAL DYNAMICS – TRADE POLICY**

The legal framework for agribusiness is considered to be generally sound, but with clear opportunities for reform, reconciliation, and refinement. In other words, the legal basis is well established but interpretation and enforcement are generally the weak elements of the legal framework. In the trade area, there appears to be an extraordinary desire by government to thoroughly control the flow of goods into and out of the country through licensing, permits, and physical inspections. To the AGCLIR team there seems to be excessive levels of regulation and control, which has a major impact on the efficiency, time, and cost of doing business for traders of agricultural products and input supplies. For example, importers, as well as exporters must be licensed. All imports and exports that move through formal trade channels are physically inspected when they cross the country's borders. All imports of agricultural products into Mozambique must be issued an import permit before they are authorized entry, and the government insists that exporters must obtain a similar document from the country of export. Quasi-monopolies are sanctioned in the business of importing and distributing agro-chemicals, simply because government wants to exercise control over the use of these products through the companies that import and distribute them.

Even though import duty rates are relatively low compared to many countries, the imposition of VAT and other taxes, combined with port charges, delays, and high transport costs, substantially increases the delivered cost of imported goods.

In addition to infrastructure, much work remains to be done to facilitate trade through reduced government intervention in the trading process (i.e. fewer requirements), and by more efficient procedures for moving goods across borders and through the nation's ports.

Many laws, particularly those related to licensing, taxation, and labor relations, are not particularly business friendly. As a means to stimulate business activity in face of a somewhat unfavorable business environment, government has devised a range of incentives and stimulus programs that are designed to circumvent some of the effects of the negative business climate. These incentives include benefits such as a substantial reduction in the corporate income tax rate for a period of time; the duty- and tax-free importation of capital equipment; the tax-free and nominal duty for imported agricultural inputs, and the temporary importation of packaging material and other supplies that are subsequently exported. However, in many cases the process of applying for and obtaining these benefits is so bureaucratic, onerous, and time consuming that much of the anticipated benefit is lost.

Another factor that influences the business environment in Mozambique is what appears to be a general lack of trust between government and the private sector. The private sector appears to view government as obstructionist, unresponsive, and unhelpful, while government's view is that the business community is exploitative and abusive of labor. Mistrust creates uncertainty, which limits investment. While some degree of mistrust may be common to almost all countries and can be categorized as "healthy skepticism", it seems to be more severe in Mozambique than in most countries. Open, clear, and effective dialogue – where people are really listening to one another – is the best way to overcome this problem. In this regard, the CTA, as the private sector representative, and the MIC, as the representative of government, routinely meet to discuss policy issues and the viewpoint of the private sector. Additionally, CTA participates in annual public-private dialogues with sectoral ministers, regional political officials, the Prime Minister, and even the President. Unfortunately, the current program of annual conferences, fed by interim working groups led by the CTA, has not proven very effective in prioritizing reform and ensuring private sector participation in its implementation. CTA itself has identified the need to reinvigorate and supplement existing consultative mechanisms that can better accelerate reform implementation.

Customs, as the single agency that is responsible for raising the greatest amount of government revenue in Mozambique, is the organization that private traders love to hate. The customs agency has made enormous strides since the mid-1990s and is a highly professional, well-managed organization. In some cases, customs officials are unfairly maligned because they are simply enforcing the nation's laws and protecting its people from unauthorized imports of harmful products. However, when listening to trader's complaints and reading some of the experiences of those engaged in the import-export process, there appears to be a considerable lack of judgment by many front-line and supervisory officials in the interpretation and application of customs regulations. This situation implies the strong need for training of customs officials; not only in technical issues, but also in understanding the importance of trade to the nation's economy and in dealing with the public.

Corruption is a substantial issue as well. Mozambique, as is the case for many countries, is plagued by low-level extortion by low-level government officials who require a facilitation payment to do their job effectively, or to look the other way after an imagined, or real, infraction has been committed. However, in Mozambique, this blight seems to have been elevated to a higher level. Many of those interviewed by the AGCLIR team believe that one reason why customs regulations are so draconian and inflexible is that private traders will invariably fall into the trap where an administrative error in the export-import process can only be remedied on a timely basis by a facilitation payment to the official who discovers the error. Additionally, there is a strong perception among the business community – obviously unverifiable - that dysfunctional

regulations such as the requirement for pre-shipment inspections on some imported items and the required payment for scanning for all shipping containers that are imported or exported, benefits someone in authority within the Mozambican government. In general, there is a perception that many government officials have business interests within economic sub-sectors that fall within their span of control, such as some municipal authorities who have a financial interest in the transport company that serves the city. Conflicts of interest by government officials seem to be a common occurrence in Mozambique.

**Mozambique's formal trade patterns:** The following table shows Mozambique's exports and imports for 2009, with its major trading groups and partners.

<b>TABLE 10: MOZAMBIQUE'S TRADE WITH MAJOR TRADING PARTNERS, 2009 FIGURES IN US \$(000)</b>			
<b>Trading Partner</b>	<b>Mozambique Exports</b>	<b>Mozambique Imports</b>	<b>Difference</b>
World	2,047,169	3,764,207	(1,717,038)
South Africa	460,309	1,333,780	(873,471)
SADC (including South Africa)	598,261	1,435,825	(837,564)
EU 27	1,096,596	911,858	184,738
BRIC	160,493	420,587	(260,094)
USA	41,431	134,793	(93,362)
Rest of World	150,388	861,144	(710,756)
<b>Source:</b> Figures drawn from the International Trade Center TRADEMAP Database: <a href="http://www.trademap.org">http://www.trademap.org</a>			

Several conclusions can be drawn from the information presented in this table:

- Mozambique has a severe balance of payments deficit.
- Mozambique's dominant trading partner in the SADC region is South Africa; however, it imports from South Africa are almost three times greater than its exports to South Africa.
- Mozambique's imports from other countries in the SADC region (excluding South Africa) are only about \$100 million annually, and its exports to all SADC countries with the exception of South Africa are only \$138 million annually.
- The only trading area where Mozambique enjoys a trade surplus is with the EU 27 group of countries. (This is the result of aluminum exports from one of its megaprojects, which accounts for approximately 85% of its exports to EU 27).

Other than aluminum, Mozambique's main exports to EU 27 are sugar, shrimp, tobacco, and fresh fruit. Its exports to SADC (and South Africa) are predominantly mineral fuels, fruit, sugar, shrimp, and machinery. Its exports to the Brazil-Russia-India-China (BRIC) group are composed mainly of wood, aluminum, oil seeds, tobacco, and vegetables.

Mozambique's imports from the United States are primarily cereals, vehicles, and aircraft. Its imports from SADC are composed largely of fuel, machinery and equipment, sugar, and vehicles. The EU 27 provides machinery, equipment, cereals, vehicles, and pharmaceuticals. Its imports from its BRIC trading partners include fuel, machinery and equipment, vehicles, and fertilizer.

The following table shows the values of Mozambique's agricultural exports and imports for 2009. The product descriptions are based on the HS Code, two digit descriptions of traded products.



**TABLE II: TEN MOST IMPORTANT AGRICULTURAL EXPORTS  
AND IMPORTS MOZAMBIQUE 2009**

<b>Exported Products</b>	<b>Export Value US \$ (000)</b>
Tobacco and manufactured tobacco substitutes	180,613
Fish, crustaceans, mollusks, aquatic invertebrates nes	65,441
Sugars and sugar confectionery	62,437
Oil seed, oleagic fruits, grain, seed, fruit, etc, nes	48,655
Edible vegetables and certain roots and tubers	40,968
Edible fruit, nuts, peel of citrus fruit, melons	39,239
Cotton	26,590
Residues, wastes of food industry, animal fodder	21,219
Milling products, malt, starches, insulin, wheat gluten	17,307
Cereals	8,068
<b>Imported Products</b>	<b>Import Value US \$ Millions</b>
Cereals	275,596
Animal, vegetable fats and oils, cleavage products, etc	80,083
Fertilizers	47,552
Fish, crustaceans, mollusks, aquatic invertebrates nes	37,058
Milling products, malt, starches, insulin, wheat gluten	27,695
Dairy products, eggs, honey, edible animal product nes	25,382
Beverages, spirits and vinegar	17,424
Cereal, flour, starch, milk preparations and products	15,056
Vegetable, fruit, nut, etc. food preparations	14,477
Meat and edible meat offal	12,865
<b>Source:</b> Derived from the International Trade Center TRADEMAP Database <a href="http://www.trademap.org">http://www.trademap.org</a>	

As shown by this table, Mozambique's main exports are tobacco, shrimp, and sugar. Surprisingly, cotton, which in recent years was the dominant agricultural export, is now in seventh place. A brief look at the table for imported products will help to identify those agricultural products that could be produced in Mozambique to substitute for imports. Cereals, the largest import category is largely composed of maize, rice, and wheat. By providing a moderate amount of support to Mozambique's farmers to raise their productivity and improve linkages with available markets, and by improving the north-south transport system, Mozambique could undoubtedly become self-sufficient in maize production. Furthermore, Mozambique is only one of two countries in the region (Madagascar is the other) that has a competitive advantage in rice production, with its soils, water, and favorable climate.

**Informal cross-border trade.** Mozambique's informal cross-border trade (ICBT) is the unrecorded trade of goods and services that pass through border crossings between Mozambique and its neighboring SADC countries. Mozambique imports a considerable proportion of the food that its people consume, especially in major metropolitan areas such as Maputo. With the exception of grains such as wheat and rice, most of Mozambique's food imports come from South Africa, largely imported by informal traders.

The livelihood of many people in Mozambique depends on ICBT. Generally, small traders lack salaried employment. In their own way, they facilitate market liberalization and competitions in the SADC member countries. It is estimated that the amount of informal trade accounts for nearly 60% of the entire amount of cross-border trade<sup>107</sup>. Further data shows that over 50% of the informal traders depend on ICBT as their only source of income. Although SADC heads of state have signed trade protocols related to informal cross-border traders, none have been implemented by the member states.

A USAID-funded study published in 1999<sup>108</sup> estimated that the total annual value of ICBT between Mozambique and its immediate neighbors during the 1995/1996 period amounted to approximately US\$135 million. Of this total amount, approximately US \$37 million corresponded to informal exports from Mozambique to its neighbors, whereas about US \$98 million corresponded to informal imports into Mozambique. The share of agricultural products in the total volume of trade was approximately 60%. The estimated amount of foregone duties (that would have been charged during the twelve-month study period) was US \$25 million. This does not mean, however, that informal traders obtained their goods on a 'duty free basis,' since they were normally charged unofficial fees

Despite being a vibrant segment of the economy and the purest form of "free trade" – one of the SADC community's key objectives –, ICBT is not sanctioned by Mozambique trade officials. Instead, it is ignored and, at best, reluctantly tolerated. Possible reasons why informal trade is not encouraged are 1) government officials are generally skeptical of the benefits of free trade, and 2) informal trade, by definition, does not take place through formal trade channels that are controlled by government and are an important source of state revenue.

It is extremely difficult for informal traders to comply with the requirements for formal trade. For example, as described earlier, anyone who engages in importing products into Mozambique

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107. Malcolm Damon and Kristel Jeuring, *Informal Cross-border Trade as an Instrument in Alleviating Poverty*, available at [http://www.osisa.org/resources/docs/PDFs/OpenSpace-May2009/2\\_4\\_economic\\_injustice\\_p114-118\\_malcolm\\_damon\\_kristel\\_jeuring\\_cross-border\\_trade.pdf](http://www.osisa.org/resources/docs/PDFs/OpenSpace-May2009/2_4_economic_injustice_p114-118_malcolm_damon_kristel_jeuring_cross-border_trade.pdf).

108. *Estimates of Unrecorded Cross-Border Trade between Mozambique and Her Neighbors*, Jose Luis Macamo, World Vision International – Mozambique, Technical Paper No. 88 June 1999, available at <http://www.afr-sd.org/publications/88.pdf>.

must be a licensed importer. Two key requirements to obtain this license are a bank account and a birth certificate, which are beyond the reach of most small traders. Furthermore, applicants must travel to the provincial capital to apply for the license, which is costly and time consuming. Furthermore, registration must be renewed every year, requiring further expenditures and paperwork.

Just about all agricultural products that are traded between SADC member countries can be imported duty free, provided that a Certificate of Origin (CO) is presented to customs when the goods are imported. However, obtaining a CO is clearly not possible for an informal trader who buys small quantities of products from a wholesale market in South Africa to be sold at a retail market in Mozambique. Hence, they cross the border informally, with no trade documents.

In discussions with the customs chief at the Ressano Garcia border crossing with South Africa, the AGCLIR team was told that customs agents there will allow small quantities of fruit, vegetables, and processed food products to cross the border unimpeded, as long as they are transported by local people and the items are for personal use. When pressed to define what quantity of these products would be considered as personal use, the official said that approximately two sacks of onions, or potatoes, or similar products would be the upper limit for personal use.

In a visit to Maputo's wholesale market in the outlying suburb of Zimpeto, the team met with a market vendor selling fruit and vegetables who said that most of the products at the market were brought from South Africa, through the border crossing point at Ressano Garcia. The vendor explained that after crossing the border with their individual quantities, she and several other vendors would jointly hire a small truck to transport the consolidated load to the market in Maputo. The vendors are required to make several border crossings to complete their portion of the load, or otherwise hire couriers who cross the border with products on their behalf.

Despite fulfilling an important economic function, informal traders are frequently sanctioned for their informality: after a truck departs the border area with a load of products owned by several traders, the truck and its passengers are frequently stopped by the police along the roadway who demand to see proof of payment of the import duties. If the paperwork cannot be produced, the alternative is normally a facilitation payment.

## **7.7 RECOMMENDATIONS – TRADE POLICY**

The following recommendations are submitted as a means to improve the policies that affect Mozambique's trade with other countries:

### **ACCELERATE THE DEEPENING INTEGRATION OF SADC AND THE REMOVAL OF NON-TARIFF BARRIERS BETWEEN SADC MEMBER COUNTRIES**

A stronger commitment to SADC would provide enhanced market opportunities for its export products. It can do this by working closely with the SADC Secretariat to convene a series of regional meetings, each hosted by different member countries under a theme such as "SADC on the Move" or "Economic Growth through Trade" that would provide a venue and the opportunity for substantive discussions toward resolving these issues. The goal of this initiative would be to ensure that the timetable for SADC integration is met, and that the present stagnation of regional trade and integration is overcome. This would be an intermediate-term effort, likely requiring a period of 3 – 5 years.

## **ENGAGE MOZAMBIQUE'S NEIGHBORING COUNTRIES IN NEGOTIATIONS FOR THE IMMEDIATE, MUTUAL LIBERALIZATION OF INFORMAL, CROSS-BORDER TRADE IN BOTH DIRECTIONS**

Simply increasing the value of goods that can cross informally to US \$500 per cross-border visit, would dramatically increase intra-regional trade, and would also serve as a means to increase incomes and to reduce poverty by small-scale traders. Such a step would likely be less costly (in terms of lost government revenue) than the tax benefits provided to large concessions or mega-projects, and would provide direct benefits to large numbers of small traders, as well as to the overall economies of the trading countries.

## **ADVOCATE ADDITIONAL BILATERAL TRADE AGREEMENTS, ESPECIALLY WITH SOUTH AFRICA**

While developing trade agreements is a generally slow and methodical process, it would work to circumvent the slow pace of SADC intervention and provide direct access to neighboring markets for almost all of Mozambique's exports. This would require opening bilateral negotiations with South Africa, similar to those carried out with Malawi and Zimbabwe. The government could enlist the support of the USAID/Southern Africa Trade Hub to facilitate these discussions.

## **BENCHMARK FEES AND DUTIES RELATED TO TRADE IN AGRICULTURAL GOODS**

To better inform policymakers' decisions in setting tax, duty, and levy rates, the government, with the support of donors or academic or research institutions, should benchmark all formal and informal fees and duties, including crop levies, licensing fees and taxes, for maize, wheat, soy meat, and dairy products. Comparisons should include fuel and other transport related costs across no less than five countries in the region.

## **7.8 TRADE FACILITATION**

Trade facilitation refers to the simplification and harmonization of a country's international trade procedures, in line with current best practices and globally accepted standards. Trade facilitation also looks at how procedures and controls governing the movement of goods across national borders can be improved to reduce associated cost burdens and maximize efficiency while safeguarding legitimate regulatory objectives. Despite improvements in Mozambique's laws, institutions, personnel, and infrastructure in recent years, delays, administrative burdens, and corruption continue to elevate the transactions costs of international trade. More should be done to increase the effectiveness of trade institutions, integrate border institutions, improve risk management, streamline customs clearance processes, address customs' infrastructure needs, improve technology utilization, and curb corruption.

## 7.9 LEGAL FRAMEWORK – TRADE FACILITATION

Mozambique is a member of the World Customs Organization (WCO), the intergovernmental organization whose exclusive focus is on customs matters. Mozambique adopted the WTO Customs Valuation Agreement<sup>109</sup> in 2002, and fulfilled its requirement to notify its customs legislation to the WTO in 2005.

Mozambique's customs system was established by Presidential Decree No. 4/2000 and the Organic Statute of Mozambique Customs Decree No. 3/2000, as amended by Customs Decree No. 33/2002. Its general rules for customs clearance were established by Decree No. 30/2002, which provides a framework for successive regulations that are issued by Ministerial Diploma. For example, Diploma Ministerial No. 19/2003 provides regulations for the pre-shipment inspection of goods imported into Mozambique.

The customs system also provides the legal basis for goods exported under international trade agreements, such as those to SADC member countries. Diploma Ministerial No. 141/2001 provides "rules for authentication and/or issuance of documents which give rise to goods exported from Mozambique under international conventions, protocols or Trade Preference Systems in general". Similarly, Diploma Ministerial No. 170/2001 provides rules for issuing certificates of origin and validation of invoices and textile garments for export to the United States under the AGOA treaty.

Importers, as well as exporters in Mozambique must obtain a "license to carry out a productive activity" from the Ministry of Industry and Commerce. They may be either wholesalers or retailers, but the same person cannot carry out both functions. Economic operators (including importers) who wish to become distributors in urban areas are required to specialize in a selected activity (chosen from among 21

classes of products); however, specialization is not required in rural areas, where trading establishments typically supply a wide range of goods to customers. License applications must be accompanied by the appropriate documents indicating proof of identity (for natural persons) or proof of enrolment in the companies' register (for legal persons); the document for tax registration; the contract, title or lease to the premises to be used for the commercial activity; and a drawing of these premises. Mozambican traders are issued with a numbered importer/exporter card.

A customs clearing agent is required for all commercial imports and exports. Customs clearance procedures require a single document, known as a *Documento Unico* (DU), which is also available in abbreviated or simplified forms for imports of small value that do not require an inspection. The DU must be accompanied by the original invoice for the imported product; transport documents; insurance certificate; phytosanitary certificate for products of plant origin; sanitary certificate for products of animal origin; certificate of origin in case of access to a

### KEY TRADE FACILITATION LAWS AND AGREEMENTS

- Member, World Customs Organization
- WTO Customs Valuation Agreement
- MIC importer and exporter license
- Domestic Customs legislation

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109. The Customs Agreement standardizes the means for determining the value of imported goods for all WTO member countries. It stipulates that customs valuation should normally be based on the actual price of the goods to be imported, plus adjustments to arrive at the Cost, Insurance and Freight (CIF) value.

preferential regime, and any other documents needed to support a request for exemption from customs duties or taxes.

Certain imported goods such as used vehicles, home appliances, and those products subject to the import surtax are included on a "positive list" and therefore are subject to mandatory pre-shipment inspection in their country of origin.

#### KEY IMPLEMENTING INSTITUTIONS

- Customs Agency
- Mozambique Export Promotion Agency

## 7.10 IMPLEMENTING INSTITUTIONS – TRADE FACILITATION

**Customs Agency.** The Mozambique Customs Agency is a component of the Mozambique Tax Authority (ATM), which is part of the Ministry of Finance. Its function is critical to the state budget since customs revenues account for an estimated 8% of GDP, or about half the total amount of revenue collected by government.<sup>110</sup>

Of considerable importance to today's customs activities was the modernization and reform that took place within this organization over a 10-year period beginning in 1996. The reform process was carried out by a British firm, the Crown Agents, whose mandate was to create a modern and efficient customs through the improvement of revenue collection and promotion of formal trade. Its aim was to reverse the declining revenue collection and to introduce mechanisms aimed at promoting legitimate commerce, thus diminishing corruption and smuggling. Published reports<sup>111</sup> state that over the 10-year reform period, customs revenue increased 350%, and there was a reduction of corruption and fraud among customs officials; the procedures have approached international standards; the majority of the posts were computerized; and customs legislation was updated.

Beginning with the reform process, Mozambique Customs has made considerable efforts to modernize its procedures and systems with the principal aim of improving its services to the public. For example, customs legislation and procedures have been reformulated to conform to international standards including the following:

- Kyoto Convention regarding Harmonization and Simplification of Customs Procedures
- Convention on Harmonized System and Goods Classification
- WTO Evaluation Agreement
- Adoption of the Trade Information Management System (TIMS) to process customs clearances

The result of these efforts has been the following achievements: 1) The introduction of a single document (*Documento Único*) for customs clearance; 2) a gradual reduction in the number of products subject to pre-shipment inspection through the introduction of post-clearance audits, 3) customs clearance services at the border posts for goods with low commercial value and urgent spare parts for industry; 4) established an information website with information on tariffs,

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110. USAID/Nathan Associates, PARPA II Review—The Tax System in Mozambique Volume I (September 2009).

111. Centro de Integridade Pública, Good Governance-Transparency-Integrity Corruption and Reform in the Customs in Mozambique (Marcelo Mosse, 2007), available at [http://www.tiri.org/docs/rniss/cs/mozambique\\_customs.pdf](http://www.tiri.org/docs/rniss/cs/mozambique_customs.pdf).

customs legislation, and international agreements, and 5) the Customs National Network that allows voice communications and data transfer between customs offices and with their regional counterparts.

Despite these exemplary achievements, considerable work still remains to be done. Numerous studies by international organizations, including USAID, highlight some of the problems that still must be overcome to meet international standards for service and efficiency:

- *Pre-shipment inspections.* A physical inspection in the country from where imported goods are being shipped is mandated by law for specific commodities such as used vehicles, chemicals, pharmaceuticals, detergent, and certain food products. This requirement is costly and time consuming, and could be eliminated entirely by increasing the valuation capacity of customs officials who could inspect these goods upon arrival in Mozambique. Numerous studies have shown this practice to increase substantially the time and cost of importing these products into Mozambique.
- *Limited automation.* Where automation is now used, clearing agents present hard copies of documents to customs officers who then manually key in the information. The entire customs clearance process is based on a paper chain.
- *Lack of a system for risk management.* A risk management system would enable customs to identify potentially fraudulent shipments in advance of arrival of the merchandise so that action could be taken on that specific shipment, without having to physically inspect all shipments.
- *Need for consolidated services.* A "One-Stop Border Stop" clearance process at border crossings between Mozambique and neighboring countries would improve trade facilitation. Under this process, customs officials from both countries would share an office at the crossing point and provide export/import clearance simultaneously, reducing the time required for a product to cross the common border. While the needed equipment and facilities are in place at the Ressano Garcia border crossing between Mozambique and South Africa, they are yet to be used, since the legal agreement between the two countries has recently been signed.
- *Bureaucratic system of incentives.* In order to stimulate certain sub-sectors of the economy, current government policy provides incentives, including duty-free and VAT-recoverable imports of capital equipment and some supplies, such as packaging material, that are later re-exported. However, the burdensome procedures and excessive paperwork requirements to obtain these incentives considerably reduces their benefit. There is a strong need to simplify and streamline the procedures associated with obtaining these benefits, and to shorten the lead time required for an importer to obtain the VAT reimbursement.

**Mozambique Export Promotion Agency:** Founded in 1990, the Instituto para Promoção de Exportações (IPEX) is an agency within MIC with responsibility for developing Mozambique's exports of products and services. It is the national focal point for the development and promotion of exports from Mozambique. IPEX fills the traditional role of a trade promotion agency by helping national companies to attend international fairs and trade missions, and by disseminating information on commercial markets, products, and business opportunities. However, this traditional means of support has provided limited benefit to the agricultural sector since the larger concessionaires and private exporters have fully developed their export markets and need little external assistance, while the smaller agricultural enterprises are not sufficiently developed to capitalize on information and contacts for export markets. Consequently, IPEX, with financial and technical support from donor organizations, including the Netherlands' Centre for Promotion of Imports from Developing Countries (CBI), is helping to develop pilot initiatives



for the export of different agricultural and handicraft products from Mozambique. Support is provided to the value chains for seven products, including almond nuts, peanuts, chili peppers, beans, mango, pineapple, and artisan products. Intended markets include England, Spain, Germany, and Portugal. In addition to supporting the development of these export value chains, IPEX also helps agricultural producers to obtain organic classification and GlobalGap certification for their exports.

IPEX received technical assistance and institutional support from the USAID/TIP project from 2007 – 2009.

#### KEY SUPPORTING INSTITUTIONS – TRADE FACILITATION

- Trade Corridors
- Institute for Agricultural Research
- Importers and distributors of input supplies
- USAID/Southern Africa Trade Hub
- Mozambique Investment Promotion Center

## 7.1.1 SUPPORTING INSTITUTIONS – TRADE FACILITATION

**Trade corridors.** Mozambique has three major trade corridors that support the movement of people and goods between the port cities of Maputo, Beira, Nacala, and its interior regions with its neighboring countries to the west.

- The Maputo corridor provides both road and rail service to Johannesburg, South Africa; Mbabane, Swaziland; and Harare, Zimbabwe.
- The Beira corridor provides both road and rail service to Lusaka, Zambia, and road links with Lilongwe and Blantyre, Malawi
- The Nacala Corridor consists of the Port of Nacala in Mozambique, the Northern Railway network of Mozambique, and the railway system of Malawi that links the Nacala port with Lilongwe and Blantyre, Malawi. Road transport is limited and difficult, with a dry-season-only road linking western Mozambique to Malawi.

These corridors are of critical importance to Mozambique's bulk imports of grains, fertilizer, and alumina ore for processing, and its increasing exports of coal, aluminum, and other minerals. They also carry nearly 100% of the bulk trade of its landlocked neighbors with their international markets, including their minerals exports.

There are several factors that limit the efficiency of Mozambique's transport corridors:

- High road vehicle operating costs, especially on substandard roads; fuel price differentials, high import tariffs on vehicles and spare parts, product losses due to theft, and the costs of bribes and fines along the route.
- The SADC rail tariff range of US 3-5 cents/ton-kilometer is considered high by international standards<sup>112</sup>. Furthermore, railroad freight service is poor with excessive delays due to the limited availability of locomotive and rail cars and, in some cases, poor management and deficient railway maintenance. For example, CFM, Mozambique's national railway company, is now in the process of cancelling the privately-operated Beira – Sena railway concession due to unsatisfactory performance by the concessionaire. There is general agreement that

112. By comparison, the Association of American Railroads states that the average rail freight rate for all commodities in 2009 was US cents 1.8/ton-kilometer.

rail service in both the Beira and Nacala corridors must be upgraded substantially to handle the planned increase in coal exports that are scheduled to begin later this year.

- Mozambique's three main ports are privately managed under a long-term concession by an international consortium with minority participation by Mozambique's state-owned railway company. All three ports are competently managed under international standards, but investments needed to upgrade the port facilities have lagged far behind the requirements for efficient operations, as well as for increasing traffic. All ports have limited capacity, and loading and discharge operations are slow, due to insufficient equipment and inadequate harbor maintenance, resulting in delays and slow turn-around for ships. For example, Nacala port lacks gantry cranes for loading containers and the small size of its container wharf limits the throughput of containerized cargo. The entrance channel to the Beira port is narrow, and severe harbor sedimentation limits the draught of the vessels that call. Consequently, only smaller ships can enter the Beira port at high tide during daylight hours, which severely minimizes the number of vessels that can be served. The limited vessel size at Beira means that feeder vessels are required to shuttle cargo from Beira to Durban, South Africa, where it is re-loaded onto larger vessels, at additional time and cost. The Maputo port is heavily congested, and vessels can stay in Maputo Bay for a week before berthing. Furthermore, once berthed, it can take as long as two days to unload the cargo. After the containers are unloaded, importers can expect to wait up to 10 days for the containers to be released by the port operator. While medium-term investments are underway to resolve these problems, at present, port limitations constrain trade.
- Long delays at border crossing points between Mozambique and its neighboring countries continue to hamper trade. This is the result of low quality of border design and services; limited working hours by government officials, complex clearance procedures, and different customs regulations and procedures by the customs officials on different sides of the border. There is some progress, however - the coordination and extension of hours and the establishment of a good clearing facility at the Ressano-Garcia/ Komatipoort border post have resulted in a reduction in delays at the South African border. Furthermore, facilities for a single-window operating system at this border, whereby officials from the two countries share the same office, are now available. Approval is pending from the two governments.
- Finally, the economic and physical environment also affects the performance of the corridors. Other than the mining industry, low production levels, low population density, and long distances to the ports of import and export result in small traffic volumes. The limited demand for services results in a low availability of services.

A number of studies have been completed by international donors<sup>113</sup> on what investments in facilities and infrastructure and improvements in operating practices would be required to improve the performance of Mozambique's trade corridors. Some of these investments are underway, such as dredging the Beira harbor and the expansion of the Nacala container wharf, along with the purchase of gantry cranes to speed container loading there. Additional mid- to long-term investments, especially in the Beira and Nacala corridors, will be driven by the anticipated, dramatic increase in coal exports from the Tete region. Plans are underway to upgrade and expand the railways connecting the Tete mining areas with both the Beira and Nacala ports, and to construct a new coal port at Nacala. With these anticipated improvements

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113. For example, see Japan International Cooperation Agency, PADECO Co. Ltd. and Mitsubishi UFJ Research and Consulting Co., Ltd., Preparatory Survey for Southern Africa Integrated Regional Transport Program Final Report (March 2010), available at [http://www.namport.com.na/pdf/feasibility\\_studies/JICA%20Regional%20Transport%20study%20Final%20Report.pdf](http://www.namport.com.na/pdf/feasibility_studies/JICA%20Regional%20Transport%20study%20Final%20Report.pdf).

in corridor infrastructure, the Government of Mozambique would be well advised to ensure that corresponding improvements in transport and port facilities are made to serve the export of agricultural products and the import of farm inputs.

**Institute for Agricultural Research.** Among the key missions of Mozambique's National Institute for Agriculture Research (IIAM) is to increase the productivity of the nation's farmers through the development and introduction of improved agricultural crop varieties. The present-day research institute was created in 2005 by merging several different organizations within the Ministry of Agriculture, including the institutes for animal production, crop production, and veterinary science; and the centers for forestry exploitation and training. Although IIAM was created through the merger of these different organizations, its whole is not the sum of these parts – its main focus now is seed research. While it continues to do limited work in natural resource management, crop science and animal science, approximately 80% of its effort is on seed development. IIAM focuses its seed variety research on most of Mozambique's food crops: maize, rice, sorghum, cassava, sweet potato, Irish potato, ground nuts, soybeans, and pigeon peas. IIAM also works to improve the productivity of Mozambican agricultural by assessing optimum planting dates, plant population intercropping, integrated soil fertility management, etc. IIAM is highly decentralized, with offices in all of Mozambique's major agriculture producing zones.

IIAM works with a number of international organizations that support seed development. For example, it collaborates with the International Institute for Tropical Agriculture (IITA) in Ibadan, Nigeria, a member of the Consultative Group for International Agricultural Research (CGIAR), for improved varieties of soybean seed. It works with the Program for Africa's Seed Systems (PASS), an initiative of the Alliance for a Green Revolution in Africa (AGRA) to ensure that poor farmers have access to the quality seeds they need, and it is working to renovate its seed labs with financial support

## IMPORTING PESTICIDES

The importation of pesticides into Mozambique is strictly controlled by government. The importer must be licensed as a general importer by the Ministry of Industry and Commerce and be inscribed as a pesticide importer with the Plant Protection Department. The importing company must submit a formal request to become an authorized agro-chemicals importer, with a copy of the company's import license and the CV of the company manager. An inspection team composed of officials from the Ministries of Agriculture, Environment, and Health then conducts an inspection of the applicant's pesticide handling and storage facilities to verify their compliance with national regulations, and interviews the company manager to assess his or her capabilities for the safe handling of pesticides. If the results of the inspection are favorable, the company will then be approved as an authorized pesticide importer.

However, only registered pesticides can be imported into Mozambique, and the importation of a particular pesticide may only be carried out by the company that has been authorized to import that product. In other words, if Company A is authorized to import Pesticide 1 into Mozambique, and if Company B also wishes to import Pesticide 1 into the country, then Company B must first get written permission from Company A to import this pesticide. The reason for this quasi-monopoly is because the government wants a single company to be fully responsible for the distribution and use of a particular pesticide for the entire country, and therefore requires that the responsible company license other importers of that particular product.

Once a company and a particular pesticide have been registered, the actual importation of the pesticide requires PPD approval. The registered company must submit a written request, along with the pro-forma invoice and payment of a service fee that varies from 0.015% - 0.02% of the FOB value, according to the toxicology of the imported pesticide.

Imported pesticides must be appropriately labeled, in Portuguese, and the stated shelf life of the product must be at least 1.5 years from the date it is imported. Pesticides are assessed an import duty of 2.5 percent, and are not required to pay the value

from the European Union and technical support from FAO.

New seed varieties to be released for use in Mozambique must be approved by a technical committee within the Department of Seeds which is part of the Directorate of Agricultural Services within the Ministry of Agriculture. Once approved, a new variety is placed on the Ministry's list of approved seed varieties. Although the distribution of new seed varieties falls within the responsibility of the Department of Seeds, this organization is institutionally weak with limited staff and a limited budget for operating expenses. This limitation, however, provides an excellent opportunity for private sector involvement in Mozambique's seed industry to first, engage in the business of producing foundation seed by multiplying the breeder seed developed by IIAM, and second, to multiply the foundation seed to produce certified seed that can be distributed nationally by private seed suppliers.

Seed production in Mozambique could also become an opportunity for export to other SADC member countries. The harmonization of the policy and regulatory environment relating to seeds and phytosanitary measures is now being finalized across SADC countries. This measure should permit the integration of smaller and isolated national seed markets into one larger SADC market for seed.

**Importers and distributors of input supplies.** The distribution system for agricultural inputs in Mozambique largely depends on the scale of the agricultural enterprise that uses the inputs. The larger agribusinesses, including bananas, biofuels, and the concessions for tobacco, sugar, and cotton production, deal directly with large importers and distributors of agro-chemicals for their farming requirements. In most cases, these large enterprises directly import the fertilizer they require. Individual small farmers, on the other hand, depend on local dealers to supply any inputs they may apply to their farm plots.

The following is a brief description of Agrifocus, a large importer and distributor of agrochemicals, fertilizer, seed, public health supplies and equipment, and veterinary supplies. This company profile will serve to describe the trade and marketing network for agricultural inputs in Mozambique:

The main activity of this company is importing and distributing agro-chemicals. The company started as a wholesaler, with a single distribution warehouse in Maputo and four other large population centers. After the company encountered difficulty in collecting debts from its consignment sales to local distributors, it established its own distribution network of retail shops. The main crops it serves are sugar, cotton, tobacco, cashew, tea, vegetable crops (near Maputo) and new, emerging crops, including biofuels and bananas. For cotton, it serves the large producers as well as the contracted small farmers.

All the company's products are imported, mostly from exporters in China, India, and Brazil, whose sales prices of generic products are generally much lower than the branded products that large European manufacturers provide. However, specialized equipment such as mist blowers and sprayers are usually sourced from European countries.

Agrifocus sells its chemical products wholesale to other distributors, as well as at retail through its own distribution network. In general, its products are sold to small farmers in small quantities, such as 100 gram packages of seed, and chemicals in small containers no larger than one liter. Sales to larger companies are sold in larger, bulk packages.

Agrifocus has technical teams in all its sales locations that provide training to large companies and groups of small farmers on spray techniques, and on the appropriate handling and storage of farm chemicals.

The company does not require bank financing, but it does require banking services such as bank guarantees and a bank facility for overdrafts. Instead of bank loans, Agrifocus relies on supplier credit, whose terms range from 120 – 190 days. For example, Indian exporters will provide credit up to 150 days, which is the maximum allowable time given by the Indian Reserve Bank, whereas Chinese exporters normally provide a line of credit for either 120 or 190 days.

Agrifocus provides crop credit to its larger clients. For example, it will sell a large cotton company the amount of agrochemicals that the company needs to supply its contract farmers for the entire season, at 120-day repayment terms. At the end of the season, the company repays Agrifocus for the amount purchased from its cotton sales, or from its bank credit line.

The company sees the registration process for agrochemicals, as well as its registration as a chemicals importer and distributor, as quite strict but entirely reasonable given the danger that their improper use can pose to public health. In Mozambique, the registration process requires approximately one year, but in other countries, such as Brazil, the process can take as long as five years. Furthermore, now that Agrifocus is fully registered as an importer and distributor of agro-chemicals, it has a strong competitive advantage. Competing companies would have to undergo a similar, lengthy registration process to import alternative chemical products.

The company imports bagged fertilizer for many of its clients, although in relatively small quantities. Its imports are normally from South Africa, in 50-kg bags. The market for fertilizer is not large, since small farmers use minimal quantities of fertilizer, and larger companies, such as sugar producers, directly import their required quantities from international markets.

All agricultural products are imported VAT-exempt, and agrochemicals pay no import duty. Fertilizer imported from SADC countries with a valid certificate of origin pays no duties. Fertilizer imported from international suppliers must pay an import duty of 2.5%.

Other importers of fertilizer operate at a much larger scale than does Agrifocus. For example, the port of Beira has a bulk fertilizer terminal that handles large quantities of fertilizer that are imported largely by a fertilizer mixing and bagging plant at Chimoio, whose production is exported mostly to Malawi. Since the Malawi government subsidizes the cost of fertilizer to small farmers, the demand for fertilizer in Malawi is approximately 290,000 tons annually, or roughly four times the amount used by farmers in Mozambique. In fact, agricultural officials in Chimoio have noted that some of the fertilizer exported to Malawi filters back across the border into Mozambique, where it is sold in local markets at discounted prices. However, with the gradually increasing demand for fertilizer in Mozambique by commercial agriculture, the AGCLIR team was told that two additional investments in fertilizer mixing and bagging plants are being planned for the Nacala and Beira corridors, respectively.

A typical, small-scale input dealer in Mozambique will have a shop where small packets of vegetable seed imported from either Zimbabwe or South Africa are displayed, along with larger, 1 – 2 kg. bags of certified seed for maize, pulses, and other grains. A range of insecticides are also displayed, supplied by larger distributors, in small containers generally with less than one liter. A selection of knapsack sprayers, mixers, and spare parts completes the inventory of the small shop. The seed packets show neither a validation date, nor the variety names. These shops, being small, normally specialize in only seed and agrochemicals, leaving the fertilizer trade to other merchants.

**USAID/Southern Africa Trade Hub.** USAID's new Southern Africa Trade Hub (SATH) project was launched in September 2010 in Gaborone, Botswana. SATH builds on the eight years of experience of the two previous USAID-funded Trade Hubs in the Southern Africa region. The overall goal of the new project is to increase international competitiveness, intraregional trade, and food security in the SADC Region. SATH will continue to work with the Trade Hub's existing

stakeholders in the SADC Member States and the private sector on the SADC regional integration agenda, focused on energy, AGOA exports, transport, and customs. Additionally, the new SATH project will expand its scope to focus on the development of regional value chains, including those for staple foods, aimed at increasing regional food security.

Specific interventions that will be carried out under the new SATH project include the following activity components:

- Enhanced trade liberalization;
- Improved trade facilitation, transit, customs, and other areas;
- Alignment of regional agricultural and other standards with international standards;
- Strengthened regional capacity for energy sector planning and cooperation;
- New trade linkages established and greater competitiveness achieved in staple foods and other value chains;
- Enhanced private sector capacity of member states to comply with regional and international market standards, including agricultural standards;
- Increased use and availability of financial products and services for trade and investment; and
- Increased use and availability of trade related information and communications technology (ICT) products.

**Mozambique Investment Promotion Center.** The Investment Promotion Centre (CPI) has the mandate to promote and facilitate national and foreign investment in Mozambique. Through its support to the establishment of large-scale commercial agribusinesses, CPI indirectly facilitates trade in agricultural products. CPI functions as a “one-stop-shop” and provides advisory services and assistance to international, as well as local investors. It works closely with investors throughout the entire process of project submission, review, and approval, and in gaining access to the required land and fiscal incentives. A description of the steps that are typically required to successfully complete the investment process in Mozambique follows.

CPI meets the investor and provides information on the general business environment, rules, and regulations for investing in Mozambique, and the fiscal incentives that are available for new investors. Title II of the Code of Fiscal Benefits under Mozambique’s Investment Law spells out the benefits for agricultural and fishery investments. Approved investments in these sectors qualify for an 80% reduction in corporate income taxes until 2015, succeeded by a 50% reduction in corporate income taxes afterwards, from 2016–2025. Equipment required for the investment project is exempt from import duty and VAT. Furthermore, the cost of staff training can be written off against residual taxes.

The investor must submit a completed application form to CPI containing a detailed investment proposal. The investment project proposal with its complete description of what the investor plans to do is a key document for the approvals process. For agricultural projects, the proposal is reviewed by CPI along with the Agricultural Investments Promotion Center (CEPAGRI), an agency within the Ministry of Agriculture. CEPAGRI evaluates the proposal and makes recommendations on the proposed project, on behalf of MOA.

Once the investment proposal has been approved, the next step is to identify the land that can be made available for the investment project. CPI supports the investor in the process of land identification and in obtaining land use approvals. Land identification involves consultations and agreement by the Ministry of Agriculture, which controls all land in Mozambique through the Land Office, as well as the agreement by the local communities affected by the investment, and the respective Provincial Governor.



With the approved project and the identification of available land, the next step is to obtain the land title. Foreigners are not authorized to obtain land titles without making an investment. When local residents have to be relocated from the land where the project will be located, the required compensation must be negotiated before the title can be issued. In other words, communities must be consulted and compensated prior to the award of a land title. This may also require public hearings to ensure that no titles are outstanding for the same piece of property.

The level of government approval for the proposed agricultural project depends on the amount of land required. For projects that require less than 10,000 hectares, the Minister of Agriculture has the authority to approve the investment. However, if agro-processing will be involved, the Ministry of Industry and Commerce must approve the “industrial” part of the project. If the amount of land that is required exceeds 10,000 hectares, then approval of the proposed project must be made by the Cabinet.

With final government approval, the project can get underway. The CPI and the MOA monitor the actual progress of the project against the business plan that is included as part of the project proposal. In the event the project is substantially delayed or the investor does not comply with the business plan, government can revoke the investor’s land lease and fiscal benefits. This occurred recently in Gaza province, where the government cancelled the lease on a 3,000 hectare biofuels/sugar cane project being carried out by the Procana Company, on the grounds that the company had not made the required investments.

**Banking sector.** This report’s chapter on Getting Credit describes the limited availability of rural finance for scale SMEs, especially small farmers. In general, international companies operating in Mozambique can circumvent local financing limitations by obtaining funds from international sources, such as advances from their home office, or credit from international banks. Similarly, larger Mozambique-owned agribusinesses may be able to obtain international finance, or if not, due to their size and scale of operations they are generally able obtain credit from commercial banks within Mozambique.

While larger importers are able to obtain financial instruments from local banks such as letters of credit for the purchase of imported products, and guarantees for the payment of duties and taxes on the importation of products in-bond, the availability of export or trade finance is considerably limited in Mozambique.

Inventory financing, or the extension of loans against stored commodity in a bonded facility, has been highly successful in many countries for increasing capital flows to agriculture, particularly in non-perishable crops. Inventory credit, also known as a warehouse receipts system, helps mitigate credit risk by using the stored commodity as collateral. This form of collateral is more readily available to traders and exporters and is less difficult to liquidate than the more accepted form of fixed asset collateral. However, for a warehouse receipt systems to work well, government and industry must build a legal and institutional framework to guarantee performance and minimize transaction costs. Currently, there are no inventory financing schemes available in Mozambique. The establishment of a system for warehouse receipts financing could substantially facilitate credit for traders, exporters, and agricultural producers.

## **7.12 SOCIAL DYNAMICS –TRADE FACILITATION**

Over the course of this diagnostic, the AGCLIR team heard countless times from government officials and private business people alike that “Mozambique has tremendous agricultural potential,” and “agricultural development is the best way to increase the standard of living” of the

majority of Mozambique's citizens. Unquestionably, these statements are true. Mozambique has the natural resources – good soils, abundant water, favorable climate – and access to the sea, which would permit the country to become an agricultural powerhouse and food basket for its own people, its nearby neighbors, and overseas countries in the Middle East, Europe, and Asia. Well-known statistics support this conclusion: only 12% of the country's 36 million hectares of arable land is currently under cultivation, and only around 6% of the seven million hectares of land that could potentially be irrigated is actually irrigated. This implies a natural resource that is greatly under-utilized.

Furthermore, Mozambique has preferential access to regional markets through the SADC trade protocol, and duty-free access to markets in the EU and the United States. It also has bilateral trade agreements with two of its nearest neighbors – Malawi and Zimbabwe. In addition, Mozambique has the potential to supply its own markets, by substituting for imported grain and other food crops that it can easily produce within its borders. Agricultural products from Mozambique can easily reach these markets through its major trade corridors that link its interior, and its neighboring countries with the sea.

The relevant question is “why”? If Mozambique has natural resources; industrious, hard-working people; and available markets, why is it not realizing its enormous potential in agriculture? The answer, in a single word, is constraints – overlapping and reinforcing constraints that limit its great agricultural potential. The following are examples of the main constraints and problems seen firsthand by the diagnostic team that limit access to these available markets:

- *Local markets:* In an interview with a large grain miller in Beira, the team learned that the company sources its maize almost exclusively from South Africa, and its wheat and soybeans from international suppliers in Europe and the United States. The company had made initial purchases of maize from local farmers but was forced to suspend this practice due to the poor grain quality – in the best case the local grain had to be blended with imported grain to distribute the lower quality local grain over an entire lot of milled product. In most cases, the maize grain was actually tainted, with an unpleasant taste and smell, which made it unusable. The problem was that small-scale maize farmers had no means to dry and properly store the maize, so it became infected by fungi and insects such as borers that caused severe kernel deterioration. Under present conditions, the farmers cannot meet the company's standards for maize quality. Furthermore, even if the quality of the maize from small-scale farmers was suitable, the limited storage capacity and the seasonality of production would require that the company import maize during the low production season. Targeted support to small-scale farmers is needed to help them become reliable suppliers of grain crops to Mozambique's agro-processors.
- *Regional markets:* The greatest constraint to Mozambique's exports to regional markets, in particular to South Africa, are related to the lack of trade integration - the continued assessment of duties on sensitive food products, the lack of harmonization of transport regulations, non-tariff barriers, including differences over certificates of origin, and SPS issues. For example, a banana exporter near Maputo complained that he cannot transport a fully loaded truck with bananas into South Africa because the transport regulations there do not allow the same load as he carries in Mozambique. As discussed earlier, the fruit fly invasion in Northern Mozambique caused a temporary suspension of fresh fruit and vegetable shipments into South Africa and Zimbabwe that was only partially lifted after some regions had been declared fruit fly-free. Despite these trade issues, however, the underlying problem is that undoubtedly Mozambique's agricultural producers and processors are non-competitive with South African producers, and are unable to compete in South Africa's markets, either in terms of landed cost, quality, or consistency of supply. Support is needed to improve the competitiveness of Mozambique's small-scale farmers and agro-processors.

- *International markets:* The corridors at Beira, and to a lesser extent, Nacala, have seen modest success in recent years in attracting investments in export agribusiness. The reason why growth has not been faster is likely due to logistics difficulties – limited access roads to the producing farms; the high cost of transport from the production regions to the port; the limited ship schedule due to the limited capacity of ports and harbors; the slow turn-around time for container loading and discharge, and the overall cost of exporting agricultural products and importing farm inputs and packaging supplies. Anecdotally, the AgCLIR team learned that several months ago an international agribusiness analyst made a detailed feasibility study for an investment in a large banana farm in the Beira corridor. While the production and agricultural forecast was highly favorable, the cost of logistics – moving the bananas from the farm to the port and loaded aboard ship – was too high for the project to be viable. In other words, the inefficient and costly operation of Mozambique's trade corridors is a constraint to foreign investment in Mozambique's agricultural sector.
- Another constraint is the limited capability for air shipments of perishable cargo from Mozambique. For example, during the team's visit to the Vanduzi vegetable export agribusiness near Chimoio, we learned that all the company's export products are shipped by air freight to its markets in the UK. Since none of the airports in Mozambique has the capability to store and handle perishable cargo, the company is required to transport its vegetables from Mozambique through Zimbabwe to South Africa, where they are shipped from the airport at Johannesburg. This requires the crossing of two international borders, with the corresponding costs and time delays. There is a need for upgrading the facilities of at least one of Mozambique's airports to serve agricultural exports.
- Yet another logistics problem is due to the limited quantities of agricultural products for export. This is a self-reinforcing dilemma: because the volume of agricultural products is small, the availability of shipping services – refrigerated containers, regular vessel schedules, and frequent sailings – is limited, and because there is a limited availability of export and shipping services, agricultural production is low.

These are examples of some of the constraints that limit access by Mozambique's farmers, agribusinesses, and exporters to local, regional, and international markets.

**Gender and trade.** Since much of the discussion in this chapter has related to trade policy, trade flows, and trade constraints, these tend to be gender-neutral issues. However, generally speaking, trading across Mozambique's borders is a male-dominated activity. Over the course of this assessment the team met three prominent females, who are involved with, and have impact on, trading activity: the International Relations Director for Trade, at MIC; the Executive Director of the Association of Commerce and Industry in Beira, and the Branch Manager for the DAMCO Freight Forwarding Company in Beira. The companies involved in agricultural trading activity – that is, the export of agricultural products and the import of agricultural inputs - are generally led by men, who hold most of the senior executive positions while women largely fill the medium- to lower-level administrative functions. A similar pattern was seen at those companies engaged in agricultural production and exports. Farm labor is generally done by men, while women mostly work in vegetable harvest and export packaging and in banana selection and packaging at the banana packing plants.

Retail market traders are mostly women, whereas informal trade seems to be about equally divided between men and women. Heavy machinery operators at the wharf, including crane and forklift operators are almost exclusively male, as is the case for truck drivers and cargo helpers. In almost all companies that support the trading process, including port and railway administration, trucking and transport companies, and service companies, a similar pattern of executive-level male leadership and female administrative support is the norm in Mozambique.



## **7.13 RECOMMENDATIONS – TRADE FACILITATION**

### **ACCELERATE EFFORTS TO IMPROVE CORRIDOR EFFICIENCY IN TERMS OF THE TIME AND COST OF MOVING IMPORTED AND EXPORTED GOODS ACROSS MOZAMBIQUE’S PORTS, THROUGH ITS BORDER CROSSING POINTS WITH ITS NEIGHBORING COUNTRIES, AND ALONG ITS ROADS AND RAILROADS**

Numerous studies have identified the infrastructure that is needed for improvements in road, railroad, port facilities, and harbor depth, especially in the Beira and Nacala corridors. A commitment by government, with the support of the donor community to implement these recommendations is needed to overcome these severe deficiencies. Furthermore, concession agreements should be reviewed at all three of Mozambique’s main ports to ensure that adequate equipment and wharf capacity is available to ensure the expedited loading and discharge of cargo and the quick turn-around for ocean vessels. In terms of border crossing facilities, the government should use the Ressano Garcia border crossing with South Africa as a model to follow for all its locations – especially as related to its single window service capability; the work schedule and timetable for border formalities; and the facilities for handling cargo as well as individuals who cross the border.

### **LEVERAGE PLANNED IMPROVEMENTS TO ENSURE THAT SERVICES ARE PROVIDED TO FACILITATE THE IMPORT AND EXPORT OF AGRICULTURAL PRODUCTS AND REQUIRED INPUTS SUCH AS FERTILIZER**

With the planned expansion in the exports of coal and other minerals from Mozambique as well as from its land-locked neighbors, plans are also underway for improved rail and port services within the Beira and Nacala corridors. The government should conduct a cost-benefit study to determine the feasibility of establishing refrigerated cargo handling and shipping capability for international air shipments from at least at one airport in Mozambique. Ultimately, all ports should have the capability to handle bulk fertilizer imports; cold storage facilities for perishable cargo, and sufficient handling capability for refrigerated containers.

### **PROVIDE ADDITIONAL TRAINING TO CUSTOMS BORDER OFFICIALS AND SUPERVISORY STAFF ON SADC INTEGRATION, CUSTOMS REGULATIONS, AND IN DEALING WITH THE PUBLIC**

This relatively straightforward intervention would go a long way toward changing the image of government with the general public, and the perception of the private sector toward government officials. For example, one possible source of funding for this initiative could be the World Bank Competitiveness and Private Sector Development Project.

### **ANALYZE THE ECONOMIC BENEFITS THAT WOULD ACCRUE FROM A SUBSTANTIAL LOOSENING OF GOVERNMENT CONTROLS OVER THE ENTIRE PROCESS OF IMPORTING AND EXPORTING GOODS**

Assuming the analysis would confirm that fewer controls would help to improve the business environment and lead to increased economic activity, including investment, a pilot program is recommended to spearhead the needed changes. In this regard, numerous studies have been

conducted that recommend changes in customs operations such as the elimination of pre-shipment inspections and modifying the universal charge for container scanning. Further recommendations are for customs to work smarter by incorporating risk management procedures that eliminate the need to physically inspect all cargo that enters the country. These recommendations simply need to be implemented. Further improvements would result by eliminating the requirement that customs be physically present for the loading of export containers, and the requirement for import permits for imported agricultural products.

## **DEVELOP A PLAN FOR INTERAGENCY COOPERATION/INTEGRATION OF ALL BORDER AGENCIES**

To the extent that it has not done so already, Mozambique should develop a plan for interagency cooperation and integration of the border agencies that will result in a simple seamless border process ultimately conducted through application of the Single Window concept. Certain efforts have been directed at resolving the issue but little progress on the ground in process integration has occurred. The designation of customs as the lead border agency should be the norm at all border sites. Also, one-stop shops, a best practice used effectively at Tanzania's Mombasa port, where all border agencies sit collectively and review one set of documents, should be instituted where current infrastructure allows.

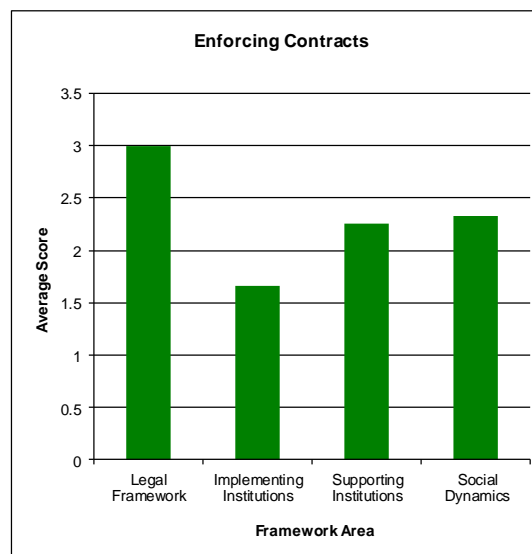
Although these actions would improve facilitation, they are only the first steps in integrating border agency processes. A study of each agency's border actions should be used to implement a more harmonized system with stakeholder involvement – a critical component in its development. A strategic plan must be devised, most likely with the support of donors, to detail how and when this integration will occur with the ultimate goal of a Single Window Process. Mozambique will need extensive assistance to realize this goal both in technical capacity and in organizing the required players needed for effective participation. The experience of Senegal, which is progressing steadily toward a full Single Window concept modeled after Singapore but adapted to the African environment, would be helpful in drafting this plan.

# 8. ENFORCING CONTRACTS

## 8.1 INTRODUCTION

Article 103 of Mozambique's Constitution of 1990 declares agriculture as the basis for the country's national development.<sup>114</sup> The same provision further guarantees and promotes rural development in order to satisfy the needs of the people and economic and social progress in the country. As in many other agricultural-based countries, contracts are a very important aspect in commercial transactions in this sector.

Mozambique has a sound legal framework for enforcing contracts. However, various economic and socio-cultural aspects are behind limited utilization of formal contracts in agribusiness, where only large companies fully utilize formal contracts in their business relationships.



The majority of the population involved in agribusiness relies on informal, verbal contracts. The few cases of use of formal written contracts are in farming where small producers are supplied with inputs and sell their produce – mostly export crops – to big agribusiness actors promoting and selling these crops. This is commonly known as contract farming.

In spite of the ongoing reforms in the judiciary, institutional arrangement and legislation, and improvement of Mozambique's *Doing Business* ranking (overall) from 130 in 2010 to 126 in 2011, there was a setback in the specific item of *Enforcing Contracts* where Mozambique fell from 129 in 2010 down to 132 in 2011.

Enforcing a contract in the capital city of Maputo can cost the plaintiff the equivalent of 142.5% of the value of the claim (where 98.5% goes to the attorney costs - it is mandatory to have one; 24% to court costs; and 20% are enforcement costs). The average duration is 730 days and 30 procedures must be pursued. This is under the assumption that there is no appeal to the Supreme Court which primarily gives priority to criminal cases. Due to the high rate of delays, the Supreme Court is often labeled the "cemetery of cases."

As an important indication of its support for private enterprise, Mozambique has created commercial sections in its courts. Currently, the sections are located in the Maputo City Judiciary Court (two sections) and in the Sofala Provincial Judiciary Court (one section). These resources for resolving commercial disputes supplement services provided by the Center for Arbitrage, Conciliation and Mediation (CACM), as well as the Commission for Labor Mediation and Arbitrage.

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114. Nr. 1, article 103, Constitution of the Republic, approved on the 16th November, 2004 and published on the 22nd December in the Official Gazette nr. 51, Series I.



Enforcing of non-written contracts is supported by local mechanisms, most of which are based on moral, traditional, religious, and local authorities. The most important institutions that back informal contracts are the religious and local authorities, Mozambican Association of Traditional Healers (AMETRAMO), which combines many functions, from healing to adjudication of disputes, and the Community Courts. Religious institutions are also respected in the process of dispute resolution.

In general, disputes are resolved both in formal legal system and customary law which coexist peacefully and do complement each other, where necessary. However, it is indeed worth mentioning that the formal legal system prevails on the informal, i.e., the courts may reject a sentence by the informal mechanisms.

The AgCLIR scoring system places the Legal Framework for Enforcing Contracts as the soundest area reviewed, the most apparent need for improvement found among the Implementing Institutions.

## 8.2 LEGAL FRAMEWORK

Since independence from Portugal in 1975, Mozambique has managed to put in place a reasonable legal framework – many laws have been enacted since the country embraced the market economy in the late 1980s. During the period in between, characterized by a mono-party system, there was a very thin boundary between politics and legality.

The reforms required for Mozambique to introduce the market economy included significant reforms, starting with the review of Mozambique's constitution in 1990, which is described in the preamble of its amended version (2004), as the turning point by referring that "The Constitution of 1990 introduced the democratic rule of law, based in the separation and independence of powers and in pluralism."<sup>115</sup>

### KEY LAWS

- Constitution (1990) (amended in 1996, 1998 and 2004)
- Customary Law
- Civil, Commercial, and Civil Proceedings Codes
- Domestic Commercial Laws
- International Commercial Laws and Conventions

Currently there is a co-existence of customary and formal law. Courts may reject the ruling by the informal system whenever the ruling is *contra legem*. Indeed, Mozambique's constitution defends the legal pluralism by recognizing the different normative and dispute resolution systems that co-exist in Mozambican society.<sup>116</sup> Apart from the national judiciary system and the "supra-state system" (that is, law imposed by international treaties, organizations and financial institutions),<sup>117</sup> in the particular case of Mozambique there is a wide and internally differentiated field of conventional judiciary pluralism where two hemispheres can be distinguished: community courts, and the community multicultural and multi-ethnic systems of justice – the case of traditional authorities.

115. Translation by MOZLEGAL – Mozambique's Legal Resource Portal [www.mozlegal.com](http://www.mozlegal.com).

116. Article 4, Constitution of the Republic of Mozambique.

117. In SANTOS, B. e TRINDADE, J. (org), CONFLITO E TRANSFORMAÇÃO SOCIAL: Uma Paisagem das Justiças em Moçambique, Vol. 1, Porto: Edições Afrontamento, 2003.

As referred to above, the customary law has its foundations in the local social constructions of justice and when the business is contracting, the fulfillment of the obligations will also be based on tradition, myths, and religious belief. The seller will supply the goods. If the buyer, alleges some reason to not pay, the seller may not take the case further believing that fairness will eventually prevail. An interesting fact is to note is that at the beginning the seller also believes that the buyer will pay, since the buyer has the moral obligation to fulfill the contract. In fact, most of the contracts are fulfilled.

In agribusiness where informal contracts are more abundant among Mozambican people, contracts are also enforced according to customary law, supported by tradition, myths and religious beliefs, and local practices. The types of contracts involve seasonal labor in farming. Often, companies do not use formal contracts with workers, despite their obligation to do so in most instances under the Labor Law. Informal contracts are also used for lending of male animals for reproduction (a monetary fee is charged at the lending and when the male is returned, he is accompanied by one or two female calves); lending of seeds; and lending of money. For example, an informal scheme, mostly used by female traders in markets, takes place through groups of traders in a revolving scale (it can be weekly or monthly). The members give an agreed-upon amount to one person in order to support his or her business or even to purchase valuable goods that in a normal situation would not be affordable. This scheme is applied in agribusiness and all participating parties agree on informal rules, which include enforcement measures, and they observe them.

In the few cases where the norms are infringed, customary law is applied and the punishment, if there is any, vary from obliging (morally) the trespasser to pay or suffer the consequences of no longer participating in such schemes; fines; as well as his/her society's rejection and even eviction from the community. These informal norms are the ones applied by the community courts, and they are also according to regional traditional and other customs and practices.

It is worth noting that, during this diagnostic, most interviewees said they feel more comfortable contracting informally with women whom are said to be trustworthy. Possible reasons of non-compliance for informal contracts by some women can be found in the social dynamics section of this chapter.

Agribusiness contracts in Mozambique are regulated and enforced by various pieces of legislation (general and specific), but the most important are Mozambique's constitution,<sup>118</sup> the Civil Code,<sup>119</sup> the Commercial Code,<sup>120</sup> the Code of Civil Proceedings,<sup>121</sup> the Regulation of

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118. Approved on the 16th November, 2004 and published on the 22nd December in the Official Gazette nr. 51, Series I.

119. Approved by the Decree-Law nr. 47,344 on the 25th November 1966, published in the Gazette of the Republic nr. 50, Series I, of the 18th of December, 1967. In Mozambique the Civil Code entered into force through the Decree nr. 22,869 of the 4th of September 1967 (as a Portuguese colony there was a need for an additional approval) and was updated by the Decree-Law nr. 3/2006, on the 23rd of August.

120. Approved by the Decree-Law nr. 2/2005, on the 27th December (former Commercial Code was dated 1888).

121. Approved by the Decree-Law nr. 44,129 on the 29th December, 1961, published in the Gazette of the Republic nr. 299, Series I. With the updates introduced by the Decree-Law nr. 47,690, on the 11th of May, 1967, published in the Gazette of the Republic nr. 113, Series II, and those by the Decree-Laws nr. 1/2005, on the 27th December and 1/2009, on the 24th April.

Registration of Legal Entities,<sup>122</sup> the Law of Regulation of Credit Institutions and Financial Societies,<sup>123</sup> the Law of Arbitrage, Conciliation and Mediation,<sup>124</sup> and the Legislation of the Agrarian Sector – a package consisting of legislation of 9 sub-sectors<sup>125</sup>). The Labor Law<sup>126</sup> and the Decree nr. 50/2009, of 11<sup>th</sup> September<sup>127</sup> (creating the Labor Mediation and Arbitration Commission) also form part of the package of legislation involved in enforcing contracts in agribusiness.

Although the Civil Code, which is the backbone of the civil law in Mozambique, and Commercial Code, which is the heart of commercial relations, legislate on the most important aspects of commercial contracts, the Agrarian Legislation is the most important in enforcing contracts in agribusiness. It establishes the contracting principles in agribusiness. It is in some of the most important pieces of legislation where templates of contracts are contained and as such, the most important laws will be dealt with in detail below, as they stipulate forms of farming contracts.

It is, however, important to stress, once again, that only a few big agribusiness companies rely on formal contracts in their commercial operations. Most of the relations established in agribusiness are based on customs rather than on formal contracts. Producers, operators, consumers, and even the local authorities, will mostly rely on local mechanisms of conflict mediation and resolution rather than on formal laws and institutions.

The Land Law<sup>128</sup> has an implicit contract of leasing (DUAT<sup>129</sup>) by which the State grants to citizen(s)/institution(s) the right of use of land for a certain period of time – unlimited for individual national citizens and up to a maximum of 50 years (renewable), against the compromise of using the land for the purpose laid out in the application and payment of correspondent taxes and fees. The enforcement of this contract continues to be problematic and has resulted in huge extensions of titled but unutilized land because of: (i) the low taxes and fees – the ongoing reform will hopefully determine higher taxes and fees to discourage the accumulation of big extensions of land by the elites; (ii) lack of capacity of the State to verify whether land is or is not being adequately utilized; and (iii) lack of feasible database and cadastre of land.

There is a feeling that the asset land although very abundant in Mozambique is not being adequately utilized, as according to the CRM land is owned by the State and by no means may

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122. Approved by the Decree-Law nr. 1/2006, on the 3rd of May and published in the supplement to the Official Gazette nr. 18, Series I.

123. Law nr. 15/99, approved on the 1st of November, published in the 4th Supplement to the Official Gazette nr. 43, Series I, and updated by the Law nr. 9/2004, approved on the 21st June, published in the Official Gazette nr. 29, Series I.

124. Law nr. 11/99, of the 8th of July, published in the Official Gazette nr. 27, Series I.

125. Land, Livestock, Sugar, Cotton, Cashew nut, Tobacco, Vegetal Sanitary and Agricultural Implements, Forestry and Wildlife, Agricultural Hydraulic. Plus extracts of legislation on Water, Mining and Investments.

126. Law nr. 23/2007, of the 20th of June, published in the Official Gazette nr. 31, Series I.

127. Published in the 2nd Supplement to the Official Gazette nr. 36, Series I.

128. Law nr. 19/97, approved on the 1st October, published in the Official Gazette nr. 40, Series I.

129. Defined in nr.1, article 1 of the Land Law.

it be sold or otherwise disposed of, nor may it be mortgaged.<sup>130</sup> People involved in agribusiness feel that land should be available to be used as collateral for contracting credit.

There has been a heated ongoing debate around the economic value that should be attributed to land, but land is a very politically sensitive matter and thus the debate has been occurring not as openly as it should be. Indeed, there is an informal market of land where the biggest loser is the state, since these transactions are not taxed. As such, it is important for the state to find mechanisms by which these transactions can be controlled and benefit the country.

The Law of Forestry and Wildlife is more progressive because it has provisions on the exploration under regimes of forestry<sup>131</sup> and hunting<sup>132</sup> concessions, which can be explored by individuals, companies, and communities. This is where communities have an opportunity of establishing contract partnerships with investors by combining the DUAT and the license of exploration. In return, communities benefit from employment, social services, and 20% on the taxes charged by the State on the commercial activities of the investor. It is a step forward but the gains for the communities are still insignificant and not all investors fulfill these contracts.

The sugar sub-sector legislation deals more with issues of taxation and exemptions, but some plants have contracts farming with small farmers – the so called small outgrowers who receive inputs, technical support, irrigation, and other services in order to grow sugar to then sell it to the sugar plant. The small outgrower schemes are very limited territorial wise, considering that they are confined to the areas where the few sugar plants are located, but the experience is very important and should be replicated in other sub-sectors.

Given its specificities, the cotton sub-sector has two main pieces of legislation, being the Decree on Cultivation, Commercialization and Processing of Cotton in Mozambique,<sup>133</sup> and the Regulation on Cotton Sub-Sector<sup>134</sup>

The Decree on Cultivation, Commercialization and Processing of Cotton gives the general legal framework for production, commercialization, and processing. The Regulation on Cotton Sub-Sector describes who the agribusiness players are in the cotton sub-sector, including the small producers from the family sector, as well as the Mozambique Cotton Institute (IAM).<sup>135</sup> It is in the Ministerial Regulation where contents of contracts held among the various actors are prescribed and the contracts are to be certified by the IAM – no amendments can be made on these contracts without the approval by the IAM.

The major actors in this farming contract are the small producers (non autonomous producers) and the concessionaries – actors in the cotton sector who own one or more factories and have signed a contract with the State in order to promote cotton production. The concession consists of a geographic area where the concessionary signs contracts with small farmers by which the concessionary supports the small producers in preparation of land and cultivation; supply of inputs; and through technical assistance. These inputs are then deducted from the price of the

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130. Nrs. 1 e 2, article 109 CRM.

131. Article 16, Law nr. 11/99, approved on the 7th of July.

132. Articles 20 and following.

133. Decree nr. 8/91, approved on the 23rd April, published in the Supplement to the Official Gazette nr. 16, Series I

134. Approved by the Ministerial Diploma nr. 91/94, on the 29th July (Ministry of Agriculture), published in the Official Gazette nr. 26, Series I.

135. State entity that supervises the cotton sub-sector.

cotton which the small producer is obliged, by the contract, to sell only to the concessionary. Failure to sell to the concessionary would result in a fine.

According to IAM, concessionaries in the cotton sub-sector are a transitional measure as the formulation of a strategy of revitalization of the sub-sector is underway. The concessionaries are meant to, in the meantime, bridge the gap in the supply of credit and inputs. The new strategy will liberalize the sector and new players will be introduced, such as the Community Providers of Inputs, consisting mainly of rural shop operators. Indeed, in the past these used to play a very important role in provision of inputs and technical assistance to the producers. The liberalization will affect the minimum price policy and will expose producers to negotiations with the buyers, where the use of contracts (including “Forward”) will be important.

Currently the minimum price per type of cotton is determined in a tri-party forum (government, producers and concessionaries) before the beginning of each season. Small producers complain that most of the times the price does not compensate the amount of work and inputs that the crop of cotton demands, and yet farming contracts in the cotton sub-sector (and in all other sub sectors) are adhesion contracts – the terms and conditions established by the concessionaries are not negotiable. All a small producer has to do is to sign the contract as it is presented by the concessionary.

In fact, both producers and the concessionaries agree that both the system of concessions and minimum price does not always work to the benefit of producers in years (like 2011) of high demand of cotton in the international market and low supply. But it has proven to work for the small producers in years of good supply and low demand when producers have a lot of cotton and there is a guaranteed price (minimum) and market (the concessionaries). In the case of the 2010/2011 campaign, it appears to be a dilemma for the Government as it holds the delicate responsibility of protecting small farmers against exploitation.

Contract farming has also functioned as an alternative to the bank (and microfinance) credit which is negligible for agriculture. The point is that the financial institutions only give credit if the lender has real guarantees.

Banco Terra (a rural development bank) is coming up with an innovative way of dealing with the issue of guarantees. In Chókwè, Gaza Province, the bank has signed a contract by which MIA-Mozfoods<sup>136</sup> will intermediate credit for local producers through the Contract of Guarantee of Purchase of their produce by MIA. For example, the rice processor will sign a contract with the producers obliging itself to buy their produce. This contract will serve as a guarantee to the Banco Terra to award credit to the producers at a lower interest than established by the Central Bank. By this contract, MIA is also required to deposit a symbolic guarantee with the bank. This initiative excludes producers with records in the Central Bureau of Risk.

The contract of guarantee of purchase being introduced by MIA and accepted by Banco Terra is more like a Forward Contract – very common in agribusiness. Like many other contracts (leasing, insurance, etc.), however, Mozambican producers, processors, and banks are not exploring the opportunities offered by the commercial legislation in order to improve their business.

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136. Processor of seed rice.

The tobacco sub-sector has its own regulation – the Regulation on Fomenting, Production and Commercialization of Tobacco<sup>137</sup> which is, in all, similar to the Ministerial Diploma nr. 91/94, on the cotton sub-sector.

The endorsement of contracts between tobacco players is done by the Provincial Department of Agriculture, and an innovation in this is that the contract includes a provision on arbitrage. The Committees of Arbitrage are set in the areas of farming which seems to facilitate the resolution of disputes. However, the composition of the committees may be problematic and even impartial as it includes representatives from: a) provincial/district government (is the Chairperson); b) each class of producers; c) processors, d) community authority; and e) inspection of the Ministry of Agriculture. They are appointed by the Governor/Administrator after consultation with the provincial/district director of department of agriculture. Since both Governor and Administrator are political appointees it becomes difficult to divide between politics and justice, but further analysis on this is in the section of supporting institutions.

Commercialization in the cashew nut sub-sector has a regulation approved by a decree<sup>138</sup> which is more on the classification of different qualities of cashew nut and sets a few rules on its export. The operators do not celebrate contract farming as production by the family sector and other small producers receives no inputs. There are no concessions in this sub-sector – it is completely liberalized. The cashew nut is a highly competitive commodity and the price is determined by the market.

Traders in the cashew nut sub-sector would like to see the United States Agency for International Development (USAID) come back with the guarantee fund that enabled the cashew nut industry be more competitive.

Only formal, permanent workers in agribusiness are employed pursuant to formal contracts, and usually only in big companies. Temporary (seasonal) workers do not have contracts. Although revised in 2007, the Labor Law continues to impose unfavorable conditionality to employers whenever they want to dismiss a worker. Most of the time courts will rule in favor of the workers, and compensations are very high. On the other hand, it is difficult to sign labor contracts because the seasonal labor is very inconsistent with absenteeism ranging 50% during the planting season. Much of this absenteeism is driven by farmers' needs to tend to their own plots of land.

The establishment of the Labor Mediation and Arbitrage Councils (further discussed at this chapter's section on Implementing Institutions) may encourage employers to use formal contracts with all agribusiness employees, as even when there are no formal contracts, the cases are handled legally as if there is a formal contract and the worker is favored.

Thus, apart from the informal mechanisms of enforcing contracts, which are the most utilized by the majority of the population in the country, there is enough legislation for contracts enforcement. It is not because of the insufficient or inadequate legislation that people are not using formal contracts. Rather, it is due to cultural norms and the high rates of illiteracy.

As for commodities commercialization, there is a need to harmonize the existing relevant legislation and adapt it to the reality in the field. For example, the regulation on commercialization of cotton needs to be more detailed as it is with the regulation on commercialization of tobacco.

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137. Approved by the Ministerial Diploma nr. 176/2001, on the 28th November (ministry of Agricultures).

138. Decree nr. 33/2003, approved on the 19th August.

Although the customary law respects local practices, it has to be improved in order to comply with the CRM and ordinary laws, as the formal laws are above any other system of laws. It is important to stress that Mozambique has taken significant steps toward improving its commercial legislation by adhering to international instruments, such as the New York Convention and the Washington Convention; and by conforming its commercial ADR legislation to the UNCITRAL Model Law in International Commercial Arbitration.



### 8.3 IMPLEMENTING INSTITUTIONS

In the institutional pyramid, the judiciary courts appear on the top. The courts are established by the Judiciary Organic Law<sup>139</sup> and their ruling is mandatory to all citizens and will prevail on the decisions of any other authority.<sup>140</sup> This reinforces the principle by which “The sovereign public offices are established on the principles of separation and interdependence of powers enshrined in the Constitution, and shall owe obedience to the Constitution and Laws.”<sup>141</sup>

#### KEY IMPLEMENTING INSTITUTIONS

- Courts (judiciary and community)
- IPAJ
- ADR (business, labor, tobacco commodity)
  - a) CACM (commercial disputes)
  - b) COMAL (labor disputes)
  - c) Arbitrage Commissions (tobacco commercialization)

The judiciary courts are organized according to Judiciary Organic Law, as follows:

- Supreme Court
- Superior Court of Appeal
- Provincial Judiciary Courts<sup>142</sup>
- District Judiciary Court
- Whenever justifiable specialized courts may be established
- In the provincial capitals, courts with district competence may be established whenever the volume and complexity of judiciary activity or other circumstances justify it.

Functioning of the judiciary courts and establishment of sections are by the decision of the President of the Supreme Court, under proposal of the Superior Council of Magistrates. The most common sections in Mozambican courts are criminal and civil. Only in recent years has the Maputo City Judiciary Court established two commercial sections, one of which until 2010 was functioning as civil section but working normally as commercial section. The Sofala and Nampula Judiciary Provincial Courts also have one commercial section each.

The establishment of commercial sections in the Maputo City, Sofala, and Nampula Provincial Judiciary Courts has been motivated by the number of commercial disputes in those courts.

Professional judges hold a university degree (4-5 years training in law). Since the 1900s they receive further specialized judiciary and legal training at the Centro de Formação Jurídica e Judiciária.

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139. Law nr. 24/2007, approved on the 20th August, published in the Supplement to the Official Gazette nr. 33, Series I.

140. Article 15, Law nr. 24/2007 (T.A.).

141. Article 134, CRM (Translation by Mozlegal).

142. Maputo City holds the status of a province. Thus the Maputo City Judiciary Court is equal to a Provincial Judiciary Court.

The professional judges are supported by elected judges whose intervention is limited to factual aspects and do not have any intervention in technical matters. When introducing the figure of elected judge, the legislator had in view the diversity in Mozambican society. These judges are very helpful to the professional ones who, in many cases, are not familiar with the local traditions and customs. The appointment of judges follow a transparent process, as they are appointed within the judiciary system with no interference of other public offices, i.e., professional judges are appointed and inaugurated by their peers. The exception is the President and Vice President of Supreme Court, who being proposed by his/her peers (Superior Council of Magistrates), is inaugurated by the Head of State. The two positions are subject to endorsement by the Parliament.

The Mozambican Association of Barristers regards the judiciary system as corrupt. This statement was made by the Chairperson on the occasion of the opening of the judiciary year on 1 March 2011. However, agribusiness operators interviewed are not sure about this phenomenon in courts.

Agribusinesses are more concerned with the delays in the resolution of commercial cases, which they believe should have a differentiated treatment in courts because of their nature. Another aspect of concern are the fees charged both by courts and the lawyers, which sometimes make it impossible for a businessperson to use court services. The business people go further by saying that even in those cases when the court rules in your favor, the execution of the ruling is even more difficult and expensive, and the reward expected in return not worth the time and total amount paid to the court and lawyers.

For those in agribusiness, formal courts are not operational in most of the districts where their business takes place, or if the courts (buildings) are there, they are not adequately staffed. For example, there may be a judge but not a representative of the General Attorney, nor a paralegal or even a lawyer, in a country where it is legally mandatory to have a defender in court. The non-harmonious implantation of the legal and judiciary system is due to the fact that most of the resources are availed by donors with specific interests – some are interested in building courts, others in providing assistance to IPAJ or to the General Attorney. So it becomes a matter of which institution gets resources first to install itself in the district.

So far the experience with the operational commercial sections in Maputo, Sofala, and Nampula is promising because they are helping to reduce the delays in adjudicating commercial cases, having simplified proceedings than those in normal judiciary courts. But the challenges are very significant because commercial sections require specialized judges. Currently, the judges for these sections are appointed according to their experience in serving in ordinary courts – preferably those appointed have served in a district court, handling commercial cases of small amounts. Judges also benefit from additional training and internships in foreign commercial courts or sections.

The judiciary system at the lower level is supported by Community Courts, formerly designated People's Courts. These courts operate with members elected by local representative bodies. Any national citizen not less than 25 years old can be a member of a community court. The "judges" have no training in law, but more recently the Centre for Legal and Judiciary Training has started short courses to train members of the community courts who were elected more than two decades ago.

Community courts are very important in handling micro-cases, which require no application of legal techniques. In their activity the "judges" use "... good sense and equity, informality... prioritizing oral speech and attending to the existing social and cultural values in the

Mozambican society, with the respect to the constitution<sup>143</sup>. In many cases the rulings made in these courts fail to incorporate aspects of equality between men and women enshrined in the constitution and ordinary laws. As these rulings follow no technical patterns, social, political, and economic status are also influential in the process of making the final decision.

Agribusiness small and medium enterprises seldom rely on the community courts (i.e., these courts cannot respond to their needs). The jurisdiction of the community courts is limited to small conflicts of civil nature and matters rising from family relationships that result from marriages according to the local uses and custom. In these informal proceedings, the community courts will seek reconciliation. Their ruling can be appealed to district judiciary court.

The Centre for Legal and Judiciary Support (IPAJ) is an official entity that offers free legal assistance to dispossessed people because as above mentioned, representation by a defendant in court is mandatory. IPAJ has been expanding very rapidly and sometimes to remote zones where there is no judge, nor Attorney General Representative. The donor community has been very generous and supportive of IPAJ because of the potential role in the extension of justice to the poorest people. The paralegals are mostly students of law but once they conclude their studies, are licensed as lawyers, and have significant experience, they often leave IPAJ for more attractive salaried jobs

In some cases, the paralegals are accused of charging illegal fees and involvement in corrupt schemes with judges. However, this should not cast a negative shadow on the current role and potential role IPAJ can play in the enforcement of contracts in agribusiness, especially in rural areas where there is a huge need for lawyers.

**Alternative Dispute Resolution.** ADR mechanisms came about to alleviate judiciary courts in terms of commercial cases and more recently in the field of labor disputes resolution. The most visible face of ADR is the Centre for Arbitrage, Conciliation and Mediation (CACM) started by the Confederation of Business Association (CTA).

CACM was established in February 2001 and became officially operational in March 2002 as an entity of private justice. Outside the State Judiciary, it offers faster and definite resolution of commercial cases than judiciary courts. Only very special situations (prescribed in the Law of Arbitrage) can be appealed. Another advantage is that the parties in dispute have the freedom to choose the arbiters. The arbiters then agree on a third arbiter, who is the chair of session. Economy and celerity, as well as confidentiality, are other characteristics of the Centre. The arbiters receive training provided by CACM and are specialized in certain areas of business, enabling them to handle cases with deepened knowledge.

Foreign investors seem to rely on the CACM as it abides by the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Regulations. However, in many cases, when parties draft agreement, foreign investors have no idea of how the CACM operates and will prefer a foreign forum as their ADR.

Trade unions, the private sector and the government, inspired by the experience of CACM and the Labor Consultative Commission, decided to establish the Labor Mediation and Arbitrage Commission (COMAL),<sup>144</sup> which is in the process of establishing centers of mediation and arbitration in the provinces and is expanding very rapidly.

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143. Article 5, Law nr. 24/2007, approved the 29th August.

144. Approved by the Decree nr. 50/2009, on the 11th September, published in the 2nd Supplement to the Official Gazette nr. 38, Series I.

The only experience of ADR in agribusiness are the Commissions of Arbitrage<sup>145</sup> which are established in each district or province where tobacco is produced to resolve disputes, mostly between farmers and producers.

There are immense challenges for the ADR to play a significant role in enforcing agribusiness contracts as the CACM is only functioning in Maputo City and also serves Maputo Province, with a vacillating effort to establish an office in the Beira City. The headquarters in Maputo City appears to be facing difficulties as it is mostly dependent on donor funding. Therefore, it is unlikely to expect to see the CACM in the agricultural districts. COMAL deals with labor disputes and will probably constitute a real alternative in the agribusiness labor disputes.

Apart from provision of legal assistance to the needy people, IPAJ appears to be the most privileged institution to carry out civic education as it encourages individuals and institutions acting in agribusiness to use formal contracts in their transactions and relationships.

The judiciary system is encouraged to continue the expansion of commercial sections to more provinces and districts and to introduce reforms in the procedures to include conciliation in commercial cases. However, if a judge should try to approach both parties before a case is taken to trial, the conciliation judge should not be part of the jury. Most needed is specialized training, in addition to internships and exchanges.

Judiciary courts and ADR cannot replace the role slated by the Community Courts and AMETRAMO given that the formal system does not cover a major part of the country. Even in Maputo City and surroundings, with access to lawyers and judges, people will rely on AMETRAMO's decisions rather than the court. It becomes, therefore, important to encourage measures – such as training of the members of community courts and sensitizing the population – that will make the proceedings in these courts conform to Mozambique's constitution and all constitutional laws to ensure equal treatment to men and women in all spheres of political, economic, social and cultural life<sup>146</sup>; and to avoid divisions or situations of privilege or discrimination based on color, race, sex, ethnic origin, place of birth, religion, level of education, social position, physical or mental ability, the material status of one's parents, professional or political preference<sup>147</sup>

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145. Article 19 and following of the Regulation of Foment, Production and Commercialization of Tobacco, approved by the Ministerial Diploma nr. 176/2001 on the 28th November.

146. Article 36, CRM.

147. Article 39, idem.

## 8.4 SUPPORTING INSTITUTIONS

Various supporting institutions intervene in the enforcement of contracts, but the most important ones are the business associations, represented by the Mozambican Confederation of the Economic Associations (CTA). In fact, it was within the CTA where the idea of establishing CACM was born. CTA is one of the members of CACM and has the responsibility of encouraging its members in using formal contracts and gives preference to ADR.

Professional associations include the Mozambican Barristers Association (OAM), the Mozambican Association of Traditional Healers (AMETRAMO), and the trade unions, represented by the Organization of Mozambican Workers-Central Union (OTM-Central Sindical). Their role should not be only limited to disputes resolution but extended to educating the actors in agribusiness as they are the ones who directly deal with the actors, particularly in the case of AMETRAMO, which is more rooted in communities – including in the urban settings. The peasant farmers associations and cooperatives are also an important actor, particularly in the contract farming and credit where they often broker contractual relations between financial institutions/agribusiness companies and peasant farmers.

Law practices are very important in technically counseling their clients to use formal contracts and include the important clause of arbitration as well as to counsel them on the best ADR forum in case of disputes.

There are rumors of corruption schemes involving lawyers and judges where the offender pays a bribe that is shared between the lawyer of the victim, the judge, and the offender's lawyer. Then the case is adjudicated in favor of the offender, or the three decide on long delays, which are authorized by the bribed judge of the case. Notaries – who might also be regarded as a supporting institution – have seen their role reduced in recent years with respect to the enforcement of contracts. It is no longer mandatory to notarize contracts, although contracting parties may agree to do so. Notaries are important in certifying the contract of society – constitution of a business (including agribusiness); they intervene in bank credit mortgage; and in sale contracts (with transfer of property) where there is registered property (usually buildings, vehicles and equipment – including agricultural).

There are cases where property is unlawfully transferred through schemes of corruption. For example, the contract to sell property requires the presence of both buyer and seller for signature, but in some cases the deal is concluded without even the knowledge of the seller. The resolution takes time in court and is subjected to unfair delays and corruption schemes.

The Schools of Law are an important player. Some have already introduced specific degrees on business law, international commercial law, and short-duration training courses on contracts. If continued, these efforts will lead to the existence of lawyers specialized in commercial law and will automatically lead to training of judges in commercial law. The short duration training courses are very important both for professionals and business people. However, there is a need to push the government and media so that use of formal contracts and their importance are viewed as a need for economic development.

### KEY SUPPORTING INSTITUTIONS

- Business associations
- Local Authorities and Ministries of Agriculture and of Labor
- Schools of Law
- Associations
  - d) Barristers Association
  - e) Trade Unions
  - f) Farmers Associations and Cooperatives
  - g) AMETRAMO
- Lawyers Companies
- Notaries

Other important supporting institutions are local authorities, the Ministry of Labor and the Ministry of Agriculture in negotiation of minimum price for commodities (local authorities and Ministry of Agriculture), as well as in the enforcing of contracts when agribusiness companies breach contracts with farmers or with workers, in this case the Ministry of Labor.

Apart from the educational role that the supporting institutions must play in enforcing contracts, it becomes relevant that they are also players in fighting corruption within.

## 8.5 SOCIAL DYNAMICS

Mozambique's agribusiness chain – from production to the markets – is dominated by informal (oral) contracts and mutual support schemes. It is more a cultural matter rather than just the low territorial coverage of the judiciary system or the high illiteracy rate, although it is desirable and urgent that Mozambique improves the territorial coverage by the judiciary system and eliminates illiteracy by the year 2015.<sup>148</sup> These contracts are celebrated in the belief that parties will respect their obligations. Of course, for many reasons, parties are not always able to fulfill their obligations, and then disputes arise.

One interesting reason suggested for the very little use of formal written contracts is that Mozambique only has “big” and “small” players in agribusiness. The medium-size agribusiness is done by non-professionals who feel no need to use contracts because agribusiness is just a hobby on the weekends. In fact, some elites from Maputo City have farms where they spend weekends doing some farming but they never sell their produce. Their products are often gifts to friends or employees, or used as animal feed. So they do not function as “connectors” with big and small producers, which would contribute in providing more dynamics to agribusiness and lead to signing of formal contracts in the sector.

But in the social dynamics it is more important to observe that in Mozambique's rural settings (and even in the urban areas), in the event of disputes, parties will prefer to settle the disputes, resorting to either community courts or informal mechanisms – peasant farmers associations, AMETRAMO, local authorities, religious authorities, etc. It is here where their culture is rooted; it is what they believe in most. In fact, it is more likely that the decision by the traditional healer is implemented than that ruled by a judiciary court. People believe that not implementing the healer's decision will bring bad luck in business or in the whole of your life. As appointed above these decisions are not professional and may not be based on principles of justice. However, these are the practices accepted by the rural population and by many involved in agribusiness. Therefore, expansion of the judiciary system to the rural areas has to be carefully conducted, as the adjudication of disputes is also a matter of power, apart from being a source of income.

Modern reforms in the traditional systems of contracting and enforcement should be introduced. The major traditional players, as much as possible, should be involved and not just replaced by the new and educated judges, as those may not have legitimacy.

An example where there is need to integrate traditional and modern customs is the system of civil registry. Although civil registry has been extended to the maternity facilities, newborns cannot be registered until their name is given by a traditional healer. If the integration of customs is not carefully examined, all efforts and resources will be to no avail.

In contracts enforcing it is important to have a combination of informal and formal contracting as well as a combination of modern and traditional dispute settlement mechanisms, while the

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148. One of the Millennium Development Goals to which Mozambique is highly committed.

country invests in educating its citizens. It is a long-term project, but worth pursuing. It is a more comprehensive effort in reforming the judiciary, the traditional systems of justice, and the legal framework. It will require educating the business people and institutions, banks and micro-finance institutions, and the people as a whole on the importance of formal and written contracts.

## **8.6 RECOMMENDATIONS**

### **THROUGH A LIMITED REVIEW OF EXISTING COURT DATA, IMPROVE UNDERSTANDING OF THE TYPES OF CONTRACTS USED IN AGRICULTURE-RELATED TRANSACTIONS AND THE CIRCUMSTANCES OF ENFORCEMENT**

Beyond the general awareness that the use of formal contracts in the agriculture sector is sparse, there is very little data concerning those instances in which contracts actually are used, including, rates of default, the conditions under which enforcement is sought, and other key aspects of contracting. Such information would be useful toward better understanding how contracting can be strengthened as a source of confidence in the law and as a building block for economic growth.<sup>149</sup> A simple survey of one lower court in a rural area, identifying examples of contract disputes and interviewing parties about their respective experiences, would provide considerable guidance toward better understanding the atmosphere for agricultural contracts generally.

### **PRODUCE AND DISTRIBUTE A SIMPLE GUIDE TO THE LAWS OF CONTRACTING, COLLECTION, AND ENFORCEMENT IN THE AGRICULTURE SECTOR**

The ability to create and enforce contracts under a clear, consistent legal framework is a critical component of economic growth. Where there is widely held expectation that agreements freely entered into between businesses or individuals will be subject to enforcement by a court or other tribunal, a marketplace can be transformed. Namely, what was once mere hope for performance based on a personal relationship or vague insinuation becomes a legitimate expectation of delivery. When business partners are in fact *required* to do what they have said that they will do – pay money, deliver goods, provide services, and so forth – risk diminishes and the recipients of a promise can better plan for the future. With decreased risk, the cost of doing business goes down, thereby elevating the private sector's prospects for profit.

Thus, strengthening the use of contracts in Mozambique is not limited to better access to the contract laws themselves, but also to improving practical understanding among the individuals most likely to benefit from the use of contracts. A practical guide to agricultural contracts should first emphasize why contracts are important, and then explain the details of enforcement, particularly where collateral is involved. The simple guide should be accompanied by training to affected groups, including those who are active in farmers associations or other sectoral groups. This can be done through business and sectoral associations.

In addition to providing legal assistance to needy people, IPAJ appears to be the most privileged institution to carry out civic education to encourage individuals and institutions acting in agribusiness to use formal contracts in their transactions and relationships. Also, the role of economic and professional associations should not only be limited to dispute resolution but

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149. See World Bank, *Doing Business 2007, How to Reform* (2006) at 49 (discussing economic benefits that arise from improved systems of contract enforcement).



extended to educating the actors in agribusiness as they are the ones who directly deal with the actors and, in the case of AMETRAMO, is more rooted in communities – including in the urban settings, and CTA more rooted in the business sector.

## **ANALYZE THE RESTRICTIONS ON CONTRACTING IMPOSED BY CROP-SPECIFIC LAWS AND OTHER AGRICULTURAL LEGISLATION**

There is a need to harmonize the existing relevant legislation on commodities and adapt it to reality in the field. For example, the regulation on commercialization of cotton needs to be more detailed, as it is with the regulation on commercialization of tobacco.

## **ENCOURAGE LAW FACULTIES TO EXPAND THEIR INTEGRATION OF CONTRACTS AND AGRICULTURAL ISSUES GENERALLY INTO THEIR CURRICULA**

Lawyers tend to agree that the quality of the contracts in the agriculture sector is poor, when they exist at all. Not enough information or detail about respective risks is set forth in the documents. Accordingly, law faculties should improve their teaching of contracts, requiring students to practice drafting contracts and even conducting mock hearings over breach of contract. The training should address the types of contract that may arise in the agriculture sector, including (a) the purchase of input supplies, including seed, fertilizer, and farm chemicals by individual small farmers and/or their producer associations; (b) credit provided by input suppliers; (c) the pre-arranged sale of farm products; and (d) secured transactions involving moveable agricultural equipment. The bar association should help develop systems for form contracts, as well as train lawyers in improved construction of written contracts on behalf of their clients.

As noted in this report's chapter on Employing Workers, although certain related courses are offered, the curriculum of Mozambique's law schools does not currently reflect the extent to which the country's economy depends on agriculture. A program dedicated to strengthening agriculture awareness among the country's professionals should address these issues, along with similar circumstances that are present in business and banking education. Elements of such a program could include the following:

- Cross-enrollment between faculties;
- Team teaching of agricultural law and business classes;
- Creation of an "agriculture law and business" journal, developed as a multi-faculty initiative; and
- Academic conferences addressing key topics in law and agriculture.

## **DEVELOP AND IMPLEMENT A COMMERCIAL LAW TRAINING PROGRAM FOR LAWYERS AND JUDGES IN THE RURAL AREAS**

Part of strengthening the environment for enforcing contracts will be significantly strengthening the understanding of legal professionals about the nature of contracts and improving judicial stewardship over commercial cases. A full commercial law curriculum should be available and required of all judges. The curriculum should be informed both by local issues and case resolution statistics and by international best practices. In addition, lawyers, through their

associations, should develop systems for form contracts, as well as train lawyers in improved construction of written contracts on behalf of their clients.

# 9. CLOSING A BUSINESS

## 9.1 INTRODUCTION

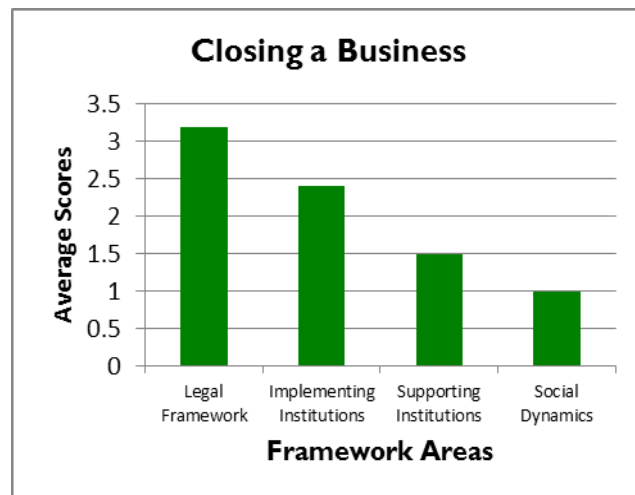
In an efficient economy where individuals and companies take calculated risks, some enterprises will fail. An effective insolvency<sup>150</sup> regime takes this truth into account, and provides an efficient method to redistribute underperforming assets into a more optimal use. An insolvency framework provides a formal mechanism for struggling debtors to receive a temporary moratorium on most debt collection actions to coordinate with creditors for a repayment plan, or ultimately liquidate the assets and distribute among debtors along a schedule of prioritized claims. In the

absence of a functioning insolvency process, underperforming enterprises have little option but to continue their desperate struggle, or merely close their doors and walk away.

The benefits of an effective insolvency process have significant impact for businesses. By establishing an orderly process for creditors to reclaim a portion of outstanding debts, insolvency law can help open the flow of credit into the private sector by mitigating a creditor's loss in the event of insolvency. Where an insolvency law permits, it can also serve to boost investment into sectors when certain classes of investors are granted priority of claims to an insolvent company's assets. More than a mere process for winding up businesses, voluntarily or involuntarily, a sound insolvency law can help encourage investment into uncharted areas of an economy.

As of August 2011, Mozambique's legal system does not have a specific law for insolvency. Mozambique's legal framework pertaining to insolvency significantly improved in 2005 with the revision and adoption of two main legal instruments, Law No. 1/2005, December 27<sup>th</sup> and Law No. 9/2005, December 23<sup>rd</sup>, which introduced amendments to the Code of Civil Procedure. They also integrated the Commercial Code into bankruptcy procedure and introduced additional changes to the regulatory framework.

In recent years, the growth of the private sector development, coupled with socio-economic dynamism, raised again the need for bankruptcy codes to respond to the needs dictated by integration into regional markets. A draft insolvency law was prepared as early as 2007 and a refreshed draft was distributed in 2009. The draft has received contributions from the local private sector. Perhaps influenced by Mozambique's lackluster showing in the World Bank's most recent *Doing Business* analysis for Closing a Business (126<sup>th</sup> out of 183 countries surveyed), there has been increasing interest in getting the law passed. USAID's SPEED project is actively assisting with this effort and in



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150. Throughout this report, the terms "bankruptcy" and "insolvency" are used interchangeably to refer to the state in which a company or an individual is unable to repay its debts, as well as the formal system employed and laws developed to provide for an orderly resolution of this state.

June 2011 published an important analysis of the draft law and the critical steps that should follow its enactment,<sup>151</sup> which SPEED projects to take place as early as Fall 2011.

Even in the absence of a new law, the AgCLIR scoring system places the Legal Framework for Closing a Business as the soundest area reviewed in this diagnostic (though still needing significant improvement), while Social Dynamics constitutes the weakest area.

## 9.2 LEGAL FRAMEWORK

Mozambique's complex bankruptcy procedures are rooted as far back as the colonial era. To deal with the problem of bankruptcy, the Portuguese Government created by the Decree n° 449/73, September 8<sup>th</sup> the Bankruptcy and Insolvency Chamber (*Câmara de Falência e Insolvência*) aiming to prepare judges and court-appointed administrators to manage the affairs of bankrupt firms and insolvent individuals.

Until 2005, Mozambique's civil procedure law was governed by the Code of Civil Procedure (*Código de Processo Civil*) as approved by Decree - Law No. 44129 December 28<sup>th</sup>, 1961. The Code of Civil Procedure has also undergone several changes as approved by: Decree-Law No. 47690, May 11<sup>th</sup> 1967; Decree-Law No. 323/70, July 11<sup>th</sup>; Law No. 8 / 92, May 6<sup>th</sup>; Decree No. 24/98, June 2<sup>nd</sup>; Law No. 11 / 99, July 8<sup>th</sup>, and by Law No. 10/2002, March 12<sup>th</sup>. Among other modest changes made to the CPC in 2001, was the extension of Mozambican Jurisdiction in cases of cross-border bankruptcy and insolvency of persons domiciled in Mozambique.

The Code of Civil Procedure seemed outdated and not adapted to the social and legal reality of the country's economy and policy environment. Its rules were not providing an efficient, quick, and adequate response required by the current economic framework and Mozambique's integration into broader multinational economic spaces.

Civil war drew hundreds of public and private companies into a state of bankruptcy, including the death of their owners, and the destruction of their assets. While many of those companies are technically bankrupt, relatively few bankruptcy declarations have been issued by the courts. According to the Department of Information and Statistics of the Supreme Court, from 1999 through 2005, only 13 bankruptcy and insolvency cases were filed. During that period, 16 cases reached final adjudication. At the end of 2005, 91 cases remained pending. This demonstrates the complexity of the proceedings. The system was generating a slow justice, crippled by delayed, and thereby, useless decisions. There was a need to modernize, improve, and simplify the rules of civil procedure, in order to contribute to a more effective and expeditious justice.

Main current legislation on bankruptcy and insolvency is contained in Articles 1135-1312 and Articles 1313-1325 of the Code of Civil Procedure as amended by Decree-Law 1/2005, December 27<sup>th</sup>. But, a new specific law with new philosophical basis on bankruptcies is needed, not only because economic dynamics require it, but also because courts take an average of five years to decide on a bankruptcy case. Very few claims are filed given the lengthy process. When in need of liquidation, it is very possible that due to the delays, a company's property or assets to sell and pay for its debts will no longer be there.

The Commercial Code, which dates back to 1888, did not follow the developments in trade of the past 100 years. Efforts after national independence, in order to adapt the Commercial Code to the new economic reality, resulted in various scattered legal proceedings that were difficult to understand and implement.

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151. USAID/SPEED, Review of 2009 Draft Law on Business Insolvency (Mozambique) (June 2011).

The provisions of Article 229 of the new Commercial Code lay out the possible causes for the dissolution of a company, including: (a) a decision taken by shareholders, (b) the suspension of its activity for a period exceeding three years, (c) due to expiry of duration (d) not engaging in any activity for a period exceeding 12 consecutive months, if said activity is not suspended under the terms established in the Code, (e) decision of the competent authority when it depends on the government authority to operate; (f) the extinction of its object, (g) supervening

illegality or impossibility of its object if, within 45 days, it has not changed its mission, (h) if from an accounting perspective the net company worth is less than half the amount of capital stock, (i) bankruptcy, (j) merging with other companies, and (l) judicial decision determining its dissolution. Any creditor or the prosecutor is entitled to request to the court a declaration of dissolution of company based on any of the above facts despite shareholders' decision not to recognize the dissolution.

One important step undertaken to reform the commercial code was the creation of new commercial sections in the Provincial Judicial Courts, as established by Decreto Lei nº 53/2005, December 22<sup>nd</sup>.

There are expectations that the new draft Law for Bankruptcy and Recovery of Economy Agents (*Projecto de Lei de Insolvências e Recuperação dos Agentes Económicos*) will establish provisions that will simplify bankruptcy procedures, professionalize bankruptcy administration, and streamline the role of the judges.

**The draft bankruptcy law.** Preparation of a new bankruptcy law, one that succinctly states the procedures for reorganization or liquidation and otherwise conforms with international best practices, began as early as 2007, with a draft law being completed in 2009. A detailed discussion of the draft law is set forth in a June 2011 publication by USAID's SPEED project, entitled Review of 2009 Draft Law on Business Insolvency (Mozambique). This is an important document that should be the foundation for review and action on the draft law, which will likely return to Parliament in the fall of 2011. The paper also points out that, if and when the new law is enacted, there will be considerable need for outreach to the private sector, the financial sector, and the public at large, as well as considerable capacity-building among Mozambican judges, insolvency administrators, and supporting professionals such as lawyers, accountants, and business managers.

If enacted, the new law will apply to all economic agents acting in their economic capacity. It will not apply to public enterprises and wholly publicly owned companies, credit institutions and

#### KEY LAWS

- Draft Law on Insolvency (2009)
- Law No. 1/2005, December 27<sup>th</sup> - Introduces Amendments to Code of Civil Procedure, in effect since June 23<sup>rd</sup>, 2006.
- Law No. 2/2005, December. 27<sup>th</sup> - Approves the Commercial Code.
- Law No. 9/2005, December 23<sup>rd</sup> - Authorizes the Government to make amendments to the Code of Civil Procedure.
- Law No 10/2005, December 23<sup>rd</sup> - Authorizes the Government to introduce amendments to the Commercial Code.
- Law No. 11/2005, December 23<sup>rd</sup> - Authorizes the Government to approve the legal framework for Commercial Registration and, to establish the Legal Entities Register.
- Decree Law No. 53/2005, December 22<sup>nd</sup> – Establishes Commercial Jurisdiction at the Provincial Courts' level.
- Law No 11/99, July 9<sup>th</sup> - Arbitration, Conciliation and Mediation

financial companies, credit unions, pension funds, companies operating in the health care plans, insurance companies, capitalization companies and other entities legally equivalent. It expects to increase economic efficiency based on the following principles: (a) to preserve and recover the economic assets, (b) withdraw from the market non-recoverable assets (c) to protect workers, (d) to ensure legal certainty, (e) to ensure the active participation of creditors (g) to maximize the value of the insolvent's assets, and (h) to reduce financial costs.

The draft law proposes to replace the words "bankruptcy" and "bankrupt" with expressions like "insolvency" and "insolvent", which are less stigmatized by the social and legal system. Articles 26 to 29 propose to introduce a new body on insolvency and recovery - the Creditors Committee - consisting of three members and three alternates, representing each class of creditors (creditors for labor, creditors with collateral, and ordinary creditors). The operation of this body will provide, along with the participation at the general creditor's meeting, a greater participation of creditors in bankruptcy process, given that the committee has supervisory power to make requests or recommendations. By extending the powers of the trustee, the committee will simultaneously reduce the power of judges in the proceedings. In the future, judges will ultimately only have to approve or reject the decisions of these committees.

The draft insolvency also proposes the introduction of the IRJ - Judicial Recovery Office (*Instituto da Recuperação Judicial*) to help overcome economic or financial problems of debtors as long as they (i) are in business for more than 12 months, (b) are not insolvent or if they have been, have their financial responsibilities declared null by the court, (c) have not, within the past two years, obtained the concession for bankruptcy, and (d) have not been convicted or have no administrator or dominant shareholder convicted of bankruptcy crimes.

The new Project of Law for Bankruptcy and Recovery of Economy Agents (*Projecto de Lei de Insolvências e Recuperação dos Agentes Económicos*) proposes that all those in an insolvency or bankruptcy situation, but ineligible by the Court to receive a judicial recovery, to be given a chance to use arbitration procedures under Law on Arbitration, Conciliation, and Mediation (Law nº 11/99, July 8<sup>th</sup>). These extra-judicial proceedings will allow the debtor to negotiate directly with creditors a recovery plan under the rules provided by this Law, as an alternative means of conflict resolution.

It is also expected that this draft law will introduce innovations on the set of causes to declare insolvency, such as: (a) lack of payment, without any legal justifiable reason, of any net obligation contained in legal instruments of execution (*titulos executivos*), and (b) practice by debtors against creditors of a series of fraudulent acts. New ways for disposing of assets were also considered. A set of new types of crimes is also listed in this new law.

**Access to law.** The availability of legislation in the courts, at the district level, is also another major concern. The majority of courts at this level do not have enough copies of key legislative acts and; when these are available, they tend to be judges' personal copies. Once the judges retire or move to a different court, they tend to take these copies with them. Once the new law on insolvency is enacted, a fundamental priority should be its sufficient distribution to impacted stakeholders.

## 9.3 IMPLEMENTING INSTITUTIONS

The bankruptcy system in Mozambique has not been working well and the main problem remains on the implementation side.

As a result of the creation of the new commercial sections in the Provincial Judicial Courts, as established by Decreto Lei nº 53/2005, December 22<sup>nd</sup>, judges assigned to these sections are required to receive specialized training, and additional measures should be considered to enhance its efficiency for both bankruptcy and execution matters. One such measure would be the introduction of “management-assisted judicial execution”, meaning that court would engage private service providers for secretarial support in execution matters. There is an urgent need for future bankruptcy cases assigned to these commercial sections to be handled by judges with better training in commercial law.

There is also a pressing need to train bankruptcy administrators. This training should be widely available to ensure competition for the work. Also, procedures are needed to prevent bankruptcy administrators from receiving appointments on the basis of favoritism. The greater the number of service providers the better quality of service that the business community will receive.

According to the new draft law, creditors require greater autonomy to decide on the bankruptcy or rehabilitation by removing the large interference of the courts. Courts should reduce their role to implementation, supervision, and legal control, as well as to approve the consensus of the Assembly of Creditors. An increase in the autonomy of the private sector will result in less intervention of judges in the bankruptcy process, thereby limiting delays. Above all, the prevailing philosophy in relation to bankruptcy stated in the Code of Civil Procedure is that a bankrupt company should be liquidated automatically.

### KEY IMPLEMENTING INSTITUTIONS

- Ministry of Justice
- Ministry of Industry and Commerce
- Ministry of Agriculture

## 9.4 SUPPORTING INSTITUTIONS

### **Unidade Técnica da Reforma Legal.**

UTREL is the executive body of an Inter-Ministerial Committee and was created by Decreto nº. 22/2002, August 27<sup>th</sup>.

UTREL has played a leadership role in the conceptualization, review and adoption of new legislation and, in 2007,

submitted to the government for discussion a new draft law on insolvency and bankruptcy. If approved, the new legislation will require considerable human resource training and administration.

### KEY SUPPORTING INSTITUTIONS

- Technical Unit for Legal Reform (UTREL)
- Center for Legal and Judicial Training
- Mozambican Bar Association (Ordem dos Advogados)
- Confederation of Mozambican Business Associations
- Association for Commerce and Industry in Sofala

### **Center for Legal and Judicial Training (CFIJ- Centro da Formação Jurídica e Judicial).**

This training institution has a significant role to play in the implementation of the new bankruptcy regime, once it is in place. Equally important is the role that can also be played by OAM (Mozambique's Bar Organization) and business organizations from the private sector, namely CTA and ACIS. Both CTA and ACIS have been outlined in previous chapters.



While the availability of legal training has expanded in recent years, there is a shortage of qualified advocates to provide legal representation even to those that can afford to pay. Moreover, the content of legal training is often too academic and not grounded on real-world principles.

The CFJJ provides copies of relevant legislation to judges undertaking training at the center. However, these texts are made available to only newly trained judges, not to those who have been in their posts for a longer time. With the growing pace of law reform, there is a real risk that judges in the district courts will not be aware of or have access to the new legislation. While there has been some donor support in ensuring that judges have up-to-date information, there is a need to improve the distribution of legislation and make it more systematic in order to reach all courts across the country. Every court should receive updated copies of laws on an annual basis.

**CTA, ACIS, and Ordem dos Advogados.** Business and professional associations have a key role to play in the implementation of new laws. Once the new bankruptcy law is enacted, these groups and others should be enlisted to help “roll it out” through public education and training of key stakeholders, such as business lawyers, judges, and others. A plan for implementation ought to be thoroughly prepared even before the law is enacted so that bankruptcy does not suffer from the same “implementation gap” found among other key laws.

## 9.5 SOCIAL DYNAMICS

In Mozambique, many current unsuccessful firms were privatized in the 1990s and put in the hands of the emerging national entrepreneurial class. Because of this, there is political pressure to protect current owners and managers.

Mozambique’s Government is concerned about the legal difficulties to conclude bankruptcy processes at the central and provincial levels. The (Decree Law No. 53/2005, December 22nd) established Chambers of Expertise in Commercial Matters/Commercial sections, in provincial judicial courts, aiming to adapt them to the new reality and to a greater efficiency in managing operations of a commercial nature. They were given competence to handle namely the following: (a) actions relating to commercial debts, (b) special actions relating to bankrupt companies, (c) actions concerning the exercise of corporate rights, (d) actions for declaration of absence, nullity and cancellation of company contracts, (e) actions of dissolution and liquidation of companies, (f) actions arising from industrial property rights, copyright and related rights, (g) actions relating to the commercial register, and (h) suspension of corporate resolutions and other protective measures for the conduct of business, among others. Under this decree, these sections are given jurisdiction over claims valued at less than 150 times the minimum wage.

Yet judges are unfamiliar with bankruptcy proceedings. With so many cases demanding attention and no practical enforcement of the “first in, first out” principle of case management, judges might tend to sideline complex, unfamiliar, and time-consuming bankruptcy proceedings. Another explanation for the low incidence of bankruptcy filings may also be a result of high tolerance for bad debts. Still, basic legal reforms can facilitate changes in this culture.

## 9.6 RECOMMENDATIONS

## **REVIEW, DEBATE, AND ACT ON THE EXISTING BANKRUPTCY LEGISLATION**

In November 2007, a new bankruptcy law was presented to the government by a group of consultants hired to draft additional legislation on closing a business (Project of Law for Bankruptcy and Recovery of Economy Agents -- *Projecto de Lei de Insolvências e Recuperação dos Agentes Económicos*). That draft was updated in 2009. The current draft law is modeled on the 2005 Brazilian law. The USAID/SPEED project projects that the law will be introduced to Parliament in Fall, 2007.

Published in 2011, the USAID/SPEED analysis on the 2009 draft law should be integrated into all next steps taken by public, private and donor representatives. Its substantive proposals for changes, including possible integration of more specific context for Mozambique into the language of the law, should be considered and acted upon. Moreover, the proposed plan for its implementation should be reviewed and readied for “roll out” as soon as the law is enacted.

## **DEVELOP A CURRICULUM FOR THE NEW BANKRUPTCY LAW, INCLUDING PROCEDURES AND BEST PRACTICES FOR THE JUDICIARY AND LAWYERS**

A wholesale revision of the insolvency law requires a fundamental shift in the legal process. In some respects, this should be made easier in that with little ongoing practice, there are no deep attachments to the existing insolvency regime. However, the new law will require extensive training to guide practitioners and judges toward a new model for insolvency. The local law schools, in collaboration with the bar association, local commercial law firms, and donor assistance, should develop a training program and materials for the new insolvency law. Donors should provide technical advisory capacity as requested to develop courses to train trainers in insolvency best practices. The training modules should be made accessible to all, including, if necessary and if possible, through distance learning to ensure access to the training modules in the rural areas.

## **ENGAGE IN A STRATEGIC COMMUNICATIONS AND OUTREACH PLAN FOR STAKEHOLDERS TO IMPROVE UNDERSTANDING OF THE BENEFITS OF REORGANIZATION, INSOLVENCY, AND CREDITORS' RIGHTS**

Fundamental to an effective insolvency regime is an entrepreneurial class willing to engage in the process. Building upon civil society efforts to advocate on behalf of insolvency law revisions, a public education campaign should be undertaken, targeted at the private sector, to better educate on the process, benefits, and risks of a functioning insolvency framework. Business associations, private sector associations, and business schools offer the best opportunity to reach a wide network of private sector enterprises. Engaged actors should develop simple materials on the options, processes, and procedures available to entrepreneurs when facing insolvency.

# 10. TABLE OF RECOMMENDATIONS

Chapter	Recommendation	Lead	Term	Priority	Difficulty
Dealing with Licenses	Conduct an awareness campaign to limit corrupt practice in the management of natural resources.	Government/ National Council to Manage Natural Resources	medium	high	Medium
Dealing with Licenses	Improve and approve the draft law on biotechnology.	Government	short	high	Low
Dealing with Licenses	Monitor the experience of all companies doing business in the Nacala Special Economic Zone, identifying opportunities to strengthen this option for agricultural enterprises	Private sector/NGOs	short	high	Low
Dealing with Licenses	Ensure private sector contribution to the development and promulgation of regulation on agriculture.	Private sector	short	high	Medium
Dealing with Licenses	Develop customer service programs for government agencies.	Government and private service-providers	short	high	Low
Dealing with Licenses	Provide additional training to government officials in the provincial areas to ensure uniform implementation of laws.	Government/ Donors	short	medium	Low
Dealing with Licenses	Conduct a review of the Law Decree n. 42.65499 to identify where procedures can be strengthened.	Government and NGOs	medium	medium	Low
Dealing with Licenses	Clearly classify agricultural inputs in one of the commerce classes.	Government	medium	medium	Low
Employing Workers	Develop a “High-Growth Job Training Initiative” through a grant program.	USAID/ Private sector/NGOs	short	high	Low
Employing Workers	Continuously track and analyze Mozambique’s experience developing farmers’	Donors	short	high	Low

Chapter	Recommendation	Lead	Term	Priority	Difficulty
	organizations.				
Employing Workers	Revisit the potential for strengthened vocational educational opportunities.	Donors/ Government	short	high	Low
Employing Workers	Through short courses or summer programs, strengthen support for rural students attending university in agriculture-related topics.	Academic, NGO, Donor	short	high	Low
Employing Workers	Promote agricultural expertise in professional education.	Educational institutions/ Private Sector	short	high	Low
Employing Workers	Review and reform the policy toward the use of foreign workers.	Government/ Private Sector	short	high	Low
Employing Workers	Revisit the labor law to reduce the cost and burden of formal employment.	Government/ Private Sector	short	high	Low
Employing Workers	Take advantage of best practices in extension services to improve the environment in Mozambique.	All stakeholders	short	high	medium
Employing Workers	Improve the conditions for women in Mozambique's labor market.	All stakeholders	short	high	Medium
Employing Workers	Research agricultural-related brain-drain and develop steps to address it.	Donors/NGOs/ Government	medium	medium	Low
Getting Credit	Revisit USAID's 2007 report on financial services and identify where recommended reforms have (or have not) been undertaken, and why	USAID and implementing partners	short	high	Low
Getting Credit	Support the enactment of a modern secured transactions law to provide quick, inexpensive, and simple creation of a proprietary security right and the establishment of a unified collateral registry	Bank of Mozambique, Council of Ministers, CTA, commercial banks	medium	high	Medium
Getting Credit	Initiate advocacy against the current FDD regime. It contributes to a culture of poor borrowing habits and even can be said to exacerbate the country's severe inflation problem.	Donors and private financial institutions.	short	high	Low

Chapter	Recommendation	Lead	Term	Priority	Difficulty
Getting Credit	Establish and build the capacity of private credit bureaus	Bank of Mozambique, Council of Ministers, CTA, commercial banks	medium	high	High
Getting Credit	Tackle the interest-rate problem through concentrated efforts at risk reduction, increased insurance opportunities, and changes in lender incentives	Bank of Mozambique, Council of Ministers, CTA, commercial banks	medium	high	High
Getting Credit	Promote mobile finance interoperability	MIC, Bank of Mozambique, commercial banks, telecom providers	short/medium	high	High
Getting Credit	Improve the enforcement of agricultural contracts	Courts, ADR institutions, lawyers associations, commercial banks	medium	high	High
Getting Credit	Enact and enforce a new bankruptcy law	Parliament, courts, lawyers associations, commercial banks	short	high	Medium
Paying Taxes	Launch a campaign to inform people about the fiscal benefits approved under the Green Revolution.	Government and Media	medium	high	medium
Paying Taxes	Simplify the tax code, taking into account the illiteracy rates and lack of formal documentation by many in rural areas.	Government	medium	high	High
Paying Taxes	Identify and remove bottlenecks in the tax refund process to reduce the repayment period.	Government	short	high	Low

Chapter	Recommendation	Lead	Term	Priority	Difficulty
Paying Taxes	Provide frequent training programs to tax agency officials so that information to the public is accurate and timely.	Government	short	high	Low
Paying Taxes	Launch an awareness campaign to improve the tax culture.	Government and Media	medium	high	Medium
Paying Taxes	Improve donor coordination with respect to the tax authority to maximize efficiencies.	Government and Donors	short	high	Low
Paying Taxes	Consider lowering the tax rate for corporations.	Government	medium	medium	Medium
Paying Taxes	Build the capacity for tax analysis within the tax agency.	Government/ Donors	medium	medium	Medium
Paying Taxes	Further integrate operations between the customs and tax agencies.	Government/ Donors	medium	medium	Medium
Paying Taxes	Support the introduction of e-taxation.	Government/ Donors	medium	medium	medium
Paying Taxes	Increase the use of automated systems for tax collection for low priority cases.	Government/ Donors	medium	medium	medium
Accessing Marketing Infrastructure	Hasten the concession process for the N1, N6, and NY roads.	Administracao Nacional de Estradas (ANE)	short	high	medium
Accessing Marketing Infrastructure	Improve donor coordination for investments in rural areas.	Donors	short	high	Low
Accessing Marketing Infrastructure	Create (physical) incentives to encourage private sector investment in farm infrastructure- such as the creating of water sources, roads and electricity.	Government	medium	high	Medium
Accessing Marketing Infrastructure	Support agricultural finance for production and commercialization of agricultural products.	Government and private sector	short	high	Medium
Accessing Marketing Infrastructure	Promote private public partnerships.	Government and private sector	short	high	Sow
Accessing Marketing Infrastructure	Invest in market information systems.	Government and private sector	short	high	Low

Chapter	Recommendation	Lead	Term	Priority	Difficulty
Accessing Marketing Infrastructure	Provide specialized training to government and para-statal agencies to strengthen their capacity to manage concession contracts.	Government and donors	short	high	Low
Accessing Marketing Infrastructure	Improve the organizational structure and technical capacity of business associations to be able to provide critical feedback to government policies.	Donors and private sector	medium	high	Low
Accessing Marketing Infrastructure	Improve business skills training for producer associations in the rural areas.	Ngos	medium	high	Low
Accessing Marketing Infrastructure	Introduce a one-stop border between Mozambique and Zimbabwe.	Government and Donors	medium	medium	medium
Accessing Marketing Infrastructure	Integrate findings from the 2011 UNIDO laboratory study into private sector development efforts.	Donors, Government, Private Sector	short	medium	low
Accessing Marketing Infrastructure	Enlist agronomists for key agricultural border crossings.	Government	medium	medium	medium
Accessing Marketing Infrastructure	Consider the introduction of incentives to use fertilizers and pesticides for rural farmers.	Government	medium	medium	low
Accessing Marketing Infrastructure	Establish grading systems and differentiated prices based on quality to reward farmers who invest in quality seed and inputs.	Government and private sector	medium	medium	low
Accessing Marketing Infrastructure	Open large extensions of land in proven productive areas to cultivate cash crops.	Government	short	medium	low
Accessing Marketing Infrastructure	Replicate the success of producers in Marracuene by supporting commercialization and storage in other areas.	Government	short	medium	medium
Accessing Marketing Infrastructure	Explore the introduction of a law to encourage farmers to save a percentage of their harvest for self consumption.	Government	medium	medium	medium
Accessing Marketing Infrastructure	Develop an information platform where specifics on rural roads and their conditions can be found.	Government and private sector	medium	medium	medium



Chapter	Recommendation	Lead	Term	Priority	Difficulty
Accessing Marketing Infrastructure	Leverage the improvements in port and rail to facilitate the import and export of agricultural products.	Government and private sector	medium	medium	medium
Trading Across Borders	Accelerate the deepening integration of SADC and the removal of non-tariff barriers between SADC member countries.	Government	medium	high	medium
Trading Across Borders	Negotiate the liberalization of informal cross-border trade in both directions.	Government and Regional Governments	short	high	Medium
Trading Across Borders	Press for additional bilateral trade agreements (especially with South Africa).	Government	medium	high	High
Trading Across Borders	Accelerate efforts to improve corridor efficiency.	Government and donors	short	high	Medium
Trading Across Borders	Provide additional training for customs officers in customer relations, SADC integration and customs regulations.	Government	medium	high	Low
Trading Across Borders	Develop a plan for interagency cooperation/integration of all border agencies.	Government and donors	medium	high	Low
Enforcing Contracts	Produce and distribute a simple guide to the laws of contracting, collection, and enforcement in the agriculture sector.	Government and donors	short	high	Low
Enforcing Contracts	Through a limited review of existing court data, improve understanding of the types of contracts used in agriculture-related transactions and the circumstances of enforcement.	Government	short	medium	low
Enforcing Contracts	Develop and implement a commercial law training program for lawyers and judges in the rural areas	Government (judiciary), bar associations, donors,	short	High	medium
Enforcing Contracts	Analyze the restrictions on contracting imposed by crop-specific laws and other agricultural legislation.	Government and donors	short	High	low

Chapter	Recommendation	Lead	Term	Priority	Difficulty
Enforcing Contracts	Encourage law faculties to expand their integration of contracts and agricultural issues generally into their curricula.	Universities	short	High	low
Closing a Business	Review, debate, and act on the existing bankruptcy legislation. Incorporate key findings of USAID/SPEED report (June 2011) into deliberations and next steps.	Government and Private sector	short	High	Medium
Closing a Business	Engage in a strategic communications and outreach plan for stakeholders to improve understanding of the benefits of reorganization, insolvency, and creditors' rights.	Professional associations, Private Sector, Media	medium	medium	low
Closing a Business	Develop a curriculum for the new law, including procedures and best practices for the judiciary and lawyers.	UTREL, Private Sector, Donors	short	high	Low